IMPLEMENTATION OF THE FEDERAL CLEAN WATER ACT

(Management of the Construction Grants Program and the Elk Pinch and Malden, West Virginia Wastewater Treatment Projects)

(98-80)

HEARING

BEFORE THE

SUBCOMMITTEE ON
INVESTIGATIONS AND OVERSIGHT

OF THE

COMMITTEE ON
PUBLIC WORKS AND TRANSPORTATION
HOUSE OF REPRESENTATIVES

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CONTENTS

Page

TESTIMONY

Blair, Thomas, president, Kelley, Gidley, Blair & Wolfe, consulting engineers, accompanied by Jim Downey, vice president, Kelley, Gidley, Blair & Wolfe .. 29

Longest, Henry L., II, Acting Deputy Assistant Administrator, Office of Water Programs, U.S. Environmental Protection Agency, accompanied by Thomas Eichler, Administrator, Region III, Philadelphia, PA, Greene Jones, Director, Water Division, and Dennis Carney, Water Division 132

Robinson, David, chief, water resources division, West Virginia Department of Natural Resources, Charleston, WV, accompanied by Tom Goodwin, grants management section, and Mike Johnson, engineering section 132

Stump, F. Douglas, president, Kawawha County Commission, accompanied by Charles L. Gates, manager, Malden Public Service District; Robert S. Evans, commissioner, Elk Pinch Public Service District; Bernard Clark, director, Planning and Community Development Commission; Walter Jarrett, commissioner, Elk Pinch Service District 29

Wessinger, Hugh, Senior Associate Director, Resources, Community and Economic Development Division, U.S. General Accounting Office, accompanied by Leo Ganster, Senior GAO Evaluator, Norman Berman and Thomas Dougherty, GAO Evaluators 6

MATERIAL RECEIVED FOR THE RECORD

Blair, Thomas J., III, P.E., president, Kelley, Gidley, Blair & Wolfe, Inc.; letter dated May 23, 1984, to Hon. Elliott H. Levitas, chairman, Subcommittee on Investigations and Oversight, concerning Elk Pinch Public Service District Sewage Project 62

Downey, James, vice president, Kelley, Gidley, Blair & Wolfe, Inc.; letter dated June 6, 1984, to Hon. Elliott H. Levitas, chairman, Subcommittee on Investigations and Oversight, enclosing copy of expenditure listings for the eligible and noneligible costs accounts concerning Elk Pinch PSD 109

Eichler, Thomas P., Regional Administrator, U.S. Environmental Protection Agency:

- Statement 184
- Letter dated June 22, 1984, to Hon. Elliott H. Levitas, chairman, Subcommittee on Investigations and Oversight; concerning Malden and Elk Pinch 209

Longest, Henry L., II, Director, Office of Water Program Operations, U.S. Environmental Protection Agency; statement 183

Means, Warren, P.E., memorandum dated December 23, 1983, from Fred Hypes, P.E., concerning Elk Pinch Office closing 33

U.S. General Accounting Office; statement of payments by the Elk Pinch Public Service District to Kelley, Gidley, Blair & Wolfe, Inc., as of November 30, 1983 23

West Virginia Department of Natural Resources; response to inquiry by Subcommittee on Investigations and Oversight, May 23, 1984 136

IMPLEMENTATION OF THE FEDERAL CLEAN WATER ACT

(Concerning the Management of the Construction Grants Program and the Elk Pinch and Malden, WV, Wastewater Treatment Projects)

WEDNESDAY, MAY 23, 1984

House of Representatives,
Subcommittee on Investigations and Oversight,
Committee on Public Works and Transportation,
Washington, DC.

The subcommittee met, pursuant to call, at 9:30 a.m., in room 2167, Rayburn House Office Building, Hon. Elliott H. Levitas (chairman of the subcommittee) presiding.

Mr. Levitas. The subcommittee will please come to order.

This morning the Subcommittee on Investigations and Oversight of the Committee on Public Works and Transportation meets to review the efforts of the U.S. Environmental Protection Agency and the State of West Virginia to carry out the requirements of the municipal wastewater treatment construction grants program authorized by title II of the 1972 Federal Clean Water Act.

Over the past 12 years, Congress has authorized more than $40 billion to assist local governments in meeting the cost of building the treatment plants and collection and interceptor systems that are necessary to comply with the 1972 law's cleanup requirements, and to provide for the protection of the public's health and well-being.

Today's hearing will focus on the performance and financial management problems of two rather costly wastewater treatment projects being constructed by the Malden and Elk Pinch public service districts in West Virginia.

To date, the Federal investment in these two projects exceeds some $30 million. Yet one of them, the Malden district project, has rarely worked properly since its completion several years ago. And the other, the Elk Pinch project, according to information we have received, is incomplete, and construction activity has halted due to financial problems.

Obviously, we want to know more about these projects, why they were approved, and who approved them. Indeed, it makes no sense to be spending millions of dollars on projects that do not work properly, or that cannot be completed.

But the problems that have been, and are being, experienced by these two projects also raise a number of other questions about how well the overall construction grants program is being managed, not only by the EPA, but by States, the grantees, and by those with whom grantees contract with to carry out numerous, important responsibilities, particularly the architect engineers who play such an important role in planning, designing, and managing the construction of these facilities.

We want to know whether the policies, practices, and procedures for the review and approval of wastewater treatment system grant applications is adequate, particularly with respect to the cost effectiveness and affordability of the proposed projects.

We want to know whether the policies, practices, and procedures for determining a grant applicant's qualification as a responsible grantee are being properly and carefully applied. Our past oversight of this program suggests that they are not. If this continues to be the case, I suggest it is not appropriate for us to continue to keep wasting the taxpayer's money, and that is what the case is if that is not going to be handled properly and in a careful manner.

And we want to know how the EPA and State agencies go about determining a prospective grantee is capable of providing adequate financial management of a grant project, as is required by the law itself, and whether or not in the process of making such a determination, both EPA and the States rely upon an obviously baseless and foundationless and phony assumption that they are responsible, unless the contrary can be proven. The two projects before us today suggest that this is a particularly inadequate area of government involvement and one which if not corrected, may well lead to an undermining of the program itself, rather than throwing good money after bad.

I look forward to hearing from the several witnesses we have scheduled today in the hope that we will obtain answers to these and the many other questions that we have. And I also want to thank my colleague, Congressman Bob Wise, for bringing this important matter to the subcommittee's attention, and his persistence and perseverance in following through both in getting the subcommittee to hold these hearings, but also in developing the information and data base upon which judgments can be made.

I believe that before we are finished with this review, we will have identified some significant areas in need of change both in the law, in regulations, in administration, and that this review will result in improvements that will strengthen the integrity of the Construction Grants Program and help us to achieve our national water quality goals, and failing that, I think we will be embarked upon a new endeavor to determine why we are spending the taxpayer's money the way we apparently are in many instances.

I want to emphasize that this hearing is not solely an evaluation of two projects, it is in my opinion, symptomatic of what is pervasive in other areas. We are not simply looking at two projects in West Virginia as if these are freaks of the system. We are rather concerned that they are illustrative of what may be happening elsewhere and which leads us to the conclusion that changes are needed.

Before we hear from our first witnesses, I would like to inquire whether my good friend, the gentleman from New York, the ranking member, Mr. Molinari, has an opening statement.

Mr. MOLINARI. Thank you, Mr. Chairman, I do.

I would like to believe that these two projects which are fraught with operational cost, and management problems are not symptomatic of the effectiveness of our municipal wastewater treatment program. However, it is troubling that after almost 12 years of implementation of the Clean Water Act by the Environmental Protection Agency, we see time after time projects such as the ones in Malden and Elk Pinch, WV, which are plagued with problems.

In the case of the Malden project, we have a situation wherein the plant is not performing up to the level of its design standards or to the State and EPA effluent discharge permit. The record is replete with instances of a similar nature and, in fact, on March 7 and 8 of this year this subcommittee held hearings on recurring problems connected with municipal permit issuance, discharge monitoring, and permit enforcement where limits are exceeded. The failure of municipalities to meet their discharge limits has been and continues to be a problem.

In the case of Elk Pinch, the problems associated with that project also are not unique. Aside from the financial problems with this sewage treatment plant, we have a situation where a small community has had to rely and depend on State and local officials and other legal, engineering, and financial talent to tell them how to do their job. What seems to be lacking in this case is a careful analysis of the project as well as continued oversight to assure that both technical and financial aspects were being handled in an acceptable fashion.

It seems to me, Mr. Chairman, that what we have here are not two atypical projects but rather more of what we have heard so much about that, indeed, we do have problems in the overall management of this program. These projects suggest to me that EPA's and the State's policies, practices, and procedures for managing construction grants program are inadequate.

The issue is one of accountability; to what extent did delegation of the construction grants program to the State of West Virginia result in the problems that exist. Was delegation appropriately handled? What really troubles me is that when situations like these in West Virginia occur, there is much finger pointing. All of a sudden, no one is accountable and no one appears to want to remedy the problem. I ask, Mr. Chairman, how we can ever achieve our clean water goals under these circumstances?

After many years, and as the chairman previously stated, $40 billion which has been spent on the construction grants program, we continue to see plants that are not meeting their permit limits or have a host of other problems.

With the large amount of Federal investment that is being pumped into these plants, we are not getting an adequate return on the Federal dollars spent. Perhaps today we will be able to gain a better understanding of the problems that exist with these two projects and perhaps EPA and the State will understand our concern and will see fit to react to it in an appropriate manner.

Finally, I think we should note for the record that the gentleman from West Virginia, Mr. Wise, has been diligent in his efforts to bring pressure to bear to solve the problems with these sewage treatment projects. He is to be commended for his efforts and persistence.

Thank you, Mr. Chairman.

Mr. LEVITAS. Thank you very much, Mr. Molinari.

The Chair recognizes the gentleman from West Virginia.

Mr. WISE. Thank you very much, Mr. Chairman.

I would like to thank you for convening this hearing to discuss the problems of the Clean Water Act and its application, particularly in rural areas. I would also like to thank you very much for the diligence of your staff, which has been an excellent group to work with and which has been very, very helpful.

Malden, of course, is a project which is built and having problems. Elk Pinch is a project under construction and stopped, I believe it still is stopped as of today—although hopefully to begin construction again this week—because of financial difficulties.

Mr. Chairman, my concern about these projects, is that, after going through what the GAO has been doing and going through what your own staff has been doing—what you see is a record that suggests that everything was right, the grantee met all the proper requirements, it went through all the proper checkpoints. There are red flags that popped up but, it appears that they were ignored or simply passed by. So on paper, both these projects are good projects. There is only one problem—neither one works.

Three years ago, in the case of Elk Pinch, citizens who raised some objections and questions and concerns were dismissed as irresponsible. One and a half years ago I was assured that my fears that the rate schedule could not be held at its present rate were groundless, and that indeed it probably would come in at below the authorized rate schedule. Of course, today we know that certainly is not the case.

I will have to say that I don't think anyone predicted the shutdown in the case of Elk Pinch because of financial difficulties before it finished construction. I predicted difficulties once it had completed that stage, but not before. Of course, the house of cards tumbled even quicker than anyone had anticipated.

I think there are really two stories concerning the EPA and of course the State Department of Natural Resources. In the case of approval of these projects, we need to know what went wrong, how did they get into this situation, and how can we avoid it in the future? I think there is another story that unfolded over the past 8 months, and that story is what was the reaction, particularly by the EPA, once the troubles became known and once they couldn't be avoided anymore?

I do want to say that in the case of the U.S. EPA Region III Administrator, Mr. Eichler, he has been straightforward and candid with me. Mr. Ravan has been likewise. But I guess my problem with the overall EPA approach is that once they decided they couldn't do anything to help, they then became punitive and so the result is that we are trying to start this Elk Pinch project and too often, what we get is simply hoop after hoop that we have to jump through.

So my hope is that out of these hearings we can reafirm our commitment to get Elk Pinch going again, and that we can do something about Malden, and that we can all look at how we can be constructive rather than simply looking at how we can—I think Mr. Molinari adequately pointed out—simply point the finger at the other person.

Finally, I just want to relay an incident I think happened—I think some people in attendance have heard this story—I think that it well summarizes why we are here.

Several years ago I had concern about Elk Pinch and telephoned the State department of natural resources [DNR] and was told that this wasn't their responsibility, that they really didn't have control of the project they told me it was U.S. EPA and that I should talk with EPA.

I talked with an EPA official in Philadelphia and was told that I was talking to the wrong office, that indeed it was the State DNR that had the responsibility, they were the people on the ground that EPA relied on. The upshot, Mr. Chairman, was apparently no one was accountable and so hopefully we can find some accountability.

What concerns me most is that beyond the problems of Elk Pinch, beyond the problems of Malden, there is a basic issue here of stewardship of Federal tax dollars. Who is watching those dollars and are they accomplishing their objectives in the case of Elk Pinch, in the case of Malden, and more importantly in the case of the Clean Water Act, are they accomplishing what they are being put out there for.

Thank you very much.

Mr. Levitas. Thank you very much, Mr. Wise, for that statement. Both you and Mr. Molinari have made some extremely important points. I think Mr. Molinari's point—that when everybody is responsible nobody is accountable and we have seen that far, far too often. Earlier this year, as you mentioned, we had a hearing at which the EPA Assistant Administrator, Mr. Ravan was here to talk about some of the problems in this water program. He had only been on the job about 5 or 6 weeks at that time and I told him that we would save our final judgment for what happened in 6 months when we get back to the hearing on this subject to see whether or not there have been changes, whether there have been improvements, or whether we still have more of the same, at which point as far as I am concerned, that is all she wrote. Today's hearing I hope will serve as sort of a milepost along the way for Mr. Ravan and his staff to be looking at to get some idea of the concerns I have, as well as the problems.

With that, we will hear from our first witness today, which is a panel from the General Accounting Office, who at the request of the subcommittee have done a study of the projects that are the subject of the hearing today. With us is Mr. Hugh Wessinger, who is Senior Associate Director, Resources and Communities and Economic Development Division, Office of the U.S. General Accounting Office, and he is accompanied by Leo Ganster, Norman Berman, and Thomas Dougherty.

Mr. Wessinger, the Chair recognizes you for your presentation.

TESTIMONY OF HUGH WESSINGER, SENIOR ASSOCIATE DIRECTOR, RESOURCES, COMMUNITY AND ECONOMIC DEVELOPMENT DIVISION, U.S. GENERAL ACCOUNTING OFFICE, ACCOMPANIED BY LEO GANSTER, SENIOR GAO EVALUATOR, NORMAN BERMAN AND THOMAS DOUGHERTY, GAO EVALUATORS

Mr. WESSINGER. Thank you.

Mr. Chairman and members of the subcommittee, at the request of your subcommittee, we have made a review of the problems surrounding the Malden and Elk Pinch, WV, wastewater treatment projects. Specifically, you were concerned about the high cost of the projects, user affordability; Federal, State, and local reviews of the projects planning, design and construction; and the Elk Pinch project default.

We are here today at your request to discuss the results of our work, to present our observations on these projects in terms of the problems we noted, the reasons for the problems, and the lessons to be learned, which may be applicable to other projects.

In summary, Mr. Chairman, the Malden project which cost about $25 million is complete but it is not working properly, and not all users have hooked up to the treatment system. The Elk Pinch project which is estimated to cost about the same as Malden is over 70 percent complete, but construction was stopped 6 months ago because of financial problems.

Located on the outskirts of Charleston, WV, Malden and Elk Pinch are public service districts which were created to acquire and operate wastewater treatment systems. The Malden system consists of about 55 miles of sewer line, 33 pump stations, and a 1.5-million-gallon-per-day treatment plant. The system became operational in August 1980 and serves 3,600 users, mostly residences. EPA grants amounted to $16.5 million of the $24.7 million project; State and local funding made up the $8.2 million balance.

The Elk Pinch project when complete will consist of about 60 miles of sewer line, 20 pump stations, and a 1.4 million gallon per day treatment plant. The system is estimated to serve 2,800 users, mostly residences. EPA has approved grants amounting to about $13.7 million of the estimated $23.8 million total project cost, with State and local funding making up the $10.1 million balance. In total, the two projects will cost an estimated $48.6 million in Federal, State, and local funds to plan, design, and construct.

Engineering plans and studies of alternatives on how to resolve the two districts' sewage problems were considered in the planning process and were evaluated by the EPA Philadelphia regional office and by local citizen groups. The conclusion of the studies was that because of the geography and soil conditions of the Charleston area, and the scattered location of the residences, a treatment plant with extensive collector lines was the most cost effective alternative to the water pollution problems.

From our review of EPA records, and our discussions with representatives of the various entities involved, we believe that EPA followed its procedures for approving grants for the planning, design, and construction of the two projects.

USER AFFORDABILITY

Residents from both project areas have raised concerns about the high user charges that they have to pay or will have to pay. At the time EPA approved the Malden project in 1978, EPA and the State had not developed criteria for determining user affordability of sewage charges. Both entities subsequently developed affordability criteria to help them decide whether a wastewater treatment project needed further study because low income users may not be able to pay the user charges. If the criteria had existed at the time EPA and the State approved the Malden project, the proposed user charges would have exceeded EPA's December 1978 criteria.

However, EPA revised its criteria in April of 1980, and under the revised criteria the Malden user charges met the criteria. In October 1982, the State also developed criteria which the Malden user charges would not have met. On the Elk Pinch project, the proposed user charge met both EPA's 1980 criteria and the State's 1982 criteria.

Meeting EPA and State affordability criteria, however, does not mean that all users can afford the charges because the criteria are based on the median family income of the project area. A median family income of $19,000, as established in the Malden project area, means that some families are earning far less than the median amount and might have difficulty paying the user charge. Because areas of the Malden PSD include pockets of the poor or unemployed, some families in the project areas most likely earn significantly less than the $19,000 median. Data was not readily available, however, showing the various levels of family incomes for users served by the two projects, such as the number of families with very low incomes.

MALDEN PROJECT PROBLEMS

The Malden treatment plant became operational in August 1980 and had experienced problems ever since. Engineering reports indicate that performance problems are due to a variety of reasons, including design error, pump station malfunctions because of power failures, excessive water, and foreign objects in the sewer system.

The effect of the performance problems is that water pollution control permit limits set by EPA for operating the Malden treatment plant have been continually exceeded. During the 41 months period, August 1980 to December 1983, the effluent exceeded one or more of the permit limitations in 34 of the 41 months. And in 28 of the 34 months, the EPA region determined that the plant was in significant noncompliance; that is, the monthly average limitation was exceeded by 40 percent or the daily maximum limit was exceeded by 1 miligram per liter.

The plant has improved its performance during calendar year 1983, having recorded significant nonecompliance in 5 of the 12 months. Because of the continuing noncompliance, the EPA regional office requested the State in December 1983 to pursue enforcement action against the Malden PSD. Two months later, however, an official in the State's compliance monitoring section told us that other PSD's in the State had more severe problems then Malden and had higher priority for enforcement action. Thus, no enforcement action was being taken.

Other major problems we identified were:

First, numerous residents have not connected their service lines to the collector system. Engineers from the State department of natural resources estimated in September 1983 that an average of 20,000 gallons per day of untreated sewage was being discharged. PSD officials could not explain why residents were not hooked up after 3 years of system operation. As of March 1984, PSD was taking action to identify these residents and require them to connect their lines to the system.

Second, in February 1983, the West Virginia Public Service Commission approved an increase in the user rate which averaged about 8 cents per 1,000 gallons. At the same time, the treatment system was experiencing operating problems and sewage was backing up into homes. Users then began refusing to pay their sewer bills. As of August 1983, 24 percent of the residents billed were delinquent for more than 90 days, with the delinquency amounting to $190,000.

Third, as of March 1984, PSD was in technical default of its bond resolution with the water development authority because it had not set aside funds with the authority to renew and replace the system in future years, and because it was exceeding its permit. The authority had not placed the project in receivership because it was monitoring PSD's actions to resolve its problems.

ELK-PINCH PROJECT PROBLEMS

The Elk Pinch project defaulted in December 1983, because the agreement to finance construction was not carried out as planned. To better understand this problem, let me briefly provide some background data.

During construction, the grantee must pay for construction expenses from its own funds, and EPA later reimburses the grantee for eligible expenses the grantee incurred. Most grantees obtain short-term loans from local banks to pay the construction expenses. When construction is completed, the grantee issues long-term bonds to pay off the short-term loans and the unreimbursed expenses. The expense of these bonds, along with estimated project operation and maintenance expenses, represents the local share which is paid by the system's users in monthly user charges.

The Elk Pinch PSD did not obtain short-term loans, but used a different financing arrangement in an effort to reduce its local cost share. It issued short term anticipatory notes—notes which anticipate certain amounts of revenue and expense--and placed the note proceeds in secured investments to generate interest income to cover the note interest expense. At the completion of construction, PSD planned to issue long-term bonds for the local share of the project costs and pay off the notes. The crucial aspect of the Elk Pinch financing arrangement was the actual cash receipts—grant funds and interest—and expenditures occur in amount and at the time anticipated by the cash-flow analysis on which the plan was based—the plan was prepared by the consulting engineer—and that project expenses remain within the budget estimate. If expenses exceeded revenues at any point during the construction period, the project would be in a deficit situation and therefore in default.

To put this financial arrangement in action, PSD adopted on August 18, 1981, a bond and note resolution prepared by a bond counsel. The resolution outlined what the project was to accomplish, how it was to be financed, the terms of the notes and bonds, the application of proceeds from the sales of bonds, covenants to the note and bond holders by PSD, and who was responsible for the various activities. The resolution and subsequent amendments constituted a contract between PSD and the purchaser of the obligations. No other documents were prepared which provided additional details on the roles and responsibilities of the parties involved.

The West Virginia Public Service Commission reviewed and approved the financing plan. Neither EPA nor the State Department of Natural Resources analyzed the financial arrangement to determine whether it was sound or whether they should be monitoring its execution. They relied on the Commission's review. EPA has no regulations covering the monitoring of local share financing during construction.

PSD defaulted on the financing arrangement in December 1983, about 21 months after construction had started. The major cause of the default was that PSD authorized payments in excess of budgeted amounts for such items as engineering fees and bond issue costs. PSD believed that there would be sufficient funds to cover higher than expected expenses because data provided by the consulting engineer and the project accountant indicated that sufficient funds would be available to cover such expenses. PSD was not aware of their financial position because they did not perform financial analyses to monitor cash-flow—the receipt of grants and interest earnings less the payment of expenses—to determine how it compared with the cash-flow estimate on which the project budget was based.

Besides the cash-flow analyses, the other major control was a requirement in the bond and note resolution that the PSD and the consulting engineer certify to the local bank handling the funds and accounts established by the resolution that the project accounts would show a minimum projected balance at all times of $12.8 million—the amount of the notes sold—so that the notes could be refunded at the completion of the project, thus protecting the noteholders.

The certification computations made by the consulting engineer to the PSD after May 1983, however, were predicated on a local share amount greater than the amount in the approved budget because actual costs were higher than approved. The consulting engineer could not provide us with documentation showing how the local share amount in the certification was computed, or with a basis for estimating that additional funds would be available to cover the additional local share costs. Our analysis showed that the $12.8 million balance was not met in May 1983 and thereafter. As a result the project was in technical default of its note resolution 7 months before the default was disclosed.

The default of the Elk Pinch financing arrangement raises the issue of the extent to which EPA or the State should review the local share financing plan and then monitor its execution. The importance of monitoring is underscored by the fact the Elk Pinch default has jeopardized the project's financial standing and its ultimate completion.

With today's higher interest rates and more incentive for using creative financing, local financing arrangements may need EPA's or the State's attention.

Mr. LEVITAS. Mr. Wessinger, I will ask you to suspend at this point. There is a vote in process on the floor. I think I will request that the subcommittee stand in recess for 15 minutes at which time we will go vote and return and then resume this hearing.

The subcommittee is in recess.

[A short recess was taken.]

Mr. LEVITAS. The subcommittee will please come to order. We will reconvene momentarily, as soon as 10 members arrive. I will recognize the gentleman from New York for a motion, but while we are waiting for the other three members to come to the meeting room, we will continue, Mr. Wessinger, with your statement.

Mr. WESSINGER. All right, Mr. Chairman. Going on with a few comments on the overall grant management.

Both the Malden and Elk Pinch grantees lacked technical expertise and were inexperienced in grants management. They relied on consulting engineers to carry out most of their responsibilities. This situation is not unique to these two projects, as we have pointed out in our studies over the past 4 years. What is of concern is that the grantees are primarily responsible under the grant agreement for the successful completion of their projects and are accountable to EPA if the projects do not meet their intended purposes.

EPA's philosophy is to maintain clear lines of responsibility and to hold the grantee accountable for how it spends Federal funds. But EPA also has an oversight role stemming from its basic responsibility for abating water pollution and as the Federal Government's agent, in disbursing Federal funds. This would suggest that before EPA disburses Federal funds, it should have reasonable assurance that a potential grantee has the management and financial capability to effectively carry out a construction grant project.

As you may recall, Mr. Chairman, we discussed the question of accountability and responsibility for construction grant projects in our November 1980 report entitled "Costly Wastewater Treatment Plants Fail To Perform as Expected." (CED 81-19, Nov. 14, 1980) The study showed many examples where projects constantly exceeded the plant's water pollution permit limits. But we had difficulty identifying the parties responsible for treatment plant deficiencies. Technically, the municipality as the grantee, is responsible; in practice no one party seems to be accountable. Charges, countercharges, innuendos, and finger pointing by all parties involved in construction permeate the history of these projects. Unfortunately, it appears that the Malden and the Elk Pinch projects can now be added to the list.

To resolve the responsibility/accountability issue, we recommended that the Congress require EPA to test various alternatives to the construction grants funding concept. The alternatives included the turnkey concept, in which one party, most likely the consulting engineer, would plan, design, and construct the plant, make sure it works, then turn over the plant to the municipality for operation. The other alternatives were to have EPA become a signatory to the contracts, or to have EPA become an adviser to the grantee.

The Congress has not adopted our recommendation. We believe that the experiences in the Malden and Elk Pinch projects indicate a need to reconsider our recommendations.

Mr. Chairman, this concludes my prepared remarks. We will be pleased to respond to any questions you may have.

Mr. LEVITAS. Thank you very much, Mr. Wessinger.

Let me start by asking you, I note your reference to our 1980 report, "Costly Wastewater Treatment," but you do not make reference at that point to the report that we had a hearing on earlier this year. Was there any reason that you made no reference to that?

Mr. WESSINGER. No particular reason, just that we wanted to highlight the one that had more substantive recommendations in it. Also, I don't recall that in our report that we discussed in March had these types of recommendations.

Mr. LEVITAS. In the background material provided to us for this hearing you state that an official in the State's compliance monitoring section told us that other PSD's had more severe problems than Malden did and had higher priority for enforcement actions and then you conclude thus, no enforcement action was being taken.

Could you tell me who in the State, what official made that comment?

Mr. BERMAN. It was the gentleman in charge of the permanent compliance section. I believe Mr. Sangini.

Mr. LEVITAS. Do you, Mr. Berman, or any of your other associates, know the nature of the more severe performance problems in the other plants?

Mr. BERMAN. No, sir; we did not determine that.

Mr. LEVITAS. The logic of the fact that no enforcement action was being taken because some other plants had worse problems than the problems at Malden sounds pretty severe; it is still not meeting its permit. It just occurs to me that one would question the type of job the State is doing altogether.

Mr. BERMAN. I would like to expand on that a little bit. The official, as well as the head of the water divison, Mr. Robinson, advised us that DNR had planned to meet with EPA region III to discuss the possibility of modifying Malden's permit and this is one of the factors involved in not taking enforcement action. At the time we completed our field work, we weren't aware of what happened subsequently whether they actually did in fact take this action.

Mr. LEVITAS. Mr. Wessinger, you note on page 5 that 20,000 gallons of raw sewage were being discharged every day in the Malden service district. What is the date with respect to which that statement is made and can you explain why it is the Federal taxpayers pay more than $20 million on a new treatment plant and there are still 20,000 gallons of raw sewage being discharged every day?

Mr. BERMAN. Congressman, we observed this condition approximately at the end of last summer, together with engineers from the State DNR [department of natural resources]. We did a field investigation and we observed raw sewage being discharged from an old combination storm sewer draining system directly into the Kanawha River. It really wasn't evident to us why this condition existed, but it appeared that numerous residents in the district had not connected their service line to the new sewage system.

Mr. LEVITAS. When your people found these discharges of raw sewage, I understand you informed the State officials?

Mr. BERMAN. Yes sir, DNR.

Mr. LEVITAS. And were they aware of this discharge before your investigators called it to their attention?

Mr. BERMAN. No sir, they weren't. They advised us that they weren't. At the time PSD was also under a health department citation because of this condition and had been for a period of about 8 to 9 months.

Mr. LEVITAS. I have a couple of other questions but I think I will reserve them for later. I think Mr. Molinari may be pursuing that line, so I will hold off at this point.

Mr. MOLINARI. I would like to clear up a question in my own mind. If you turn to page 2, in the Malden project summary, at the end of paragraph 4, you say "subsequent events showed that the design, plans and specifications were reasonable."

Then a page later you say "The Malden plant began experiencing problems when it started operations. Engineering reports indicate that performance problems are due to a variety of reasons and cannot be attributed solely to design error."

Now, there appears, at least to me, to be an inconsistency. At one point you are saying that the design specifications are reasonable, and in another case you refer to problems that are not solely design error. The inference, of course, is there was design error, in the latter remark. Can somebody clear that up?

Mr. BERMAN. In the first case, we were referring to EPA's review of the initial, preliminary design for compliance with program regulations to assure that the analysis provided by the consulting engineer complied with the program regulations in terms of looking at different design alternatives. We did not do in this case an engineering evaluation of whether those plans were adequate. We seem to be talking about EPA's review in the first case, versus what actually happened later on.

Mr. MOLINARI. Whose conclusion is that on page 2 that the subsequent events showed that the "design, plans and specifications were reasonable?" Is that GAO's conclusion or EPA's?

Mr. BERMAN. We were talking about compliance with the program regulations in terms of analysis that was submitted and EPA's determination that the design was reasonable.

Mr. MOLINARI. You are talking about EPA's conclusion?

Mr. BERMAN. EPA came to the conclusion that design met their requirements and complied with the program regulations.

Mr. MOLINARI. Well, let me ask you whether the design and specifications were reasonable, based on the study?

Mr. BERMAN. We did not do an engineering evaluation to determine that, sir.

Mr. MOLINARI. OK.

Mr. Berman. We examined, however, the different engineering data that was available and the causes of plant performance problems subsequently and the information we presented was based on the information in these engineering reports.

Mr. Molinari. Do you want to add something to that?

Mr. Wessinger. No sir.

Mr. Molinari. On page 5, you talked about the fact that numerous residents have not hooked up to the Malden project after 3 years of operation. Why is that? Why was there reluctance on the part of the residents to hook up to the project?

Mr. Berman. It wasn't clear, sir, why that was happening. Some people advised us it was because of the high user charges and they were concerned about that. We didn't go around and interview all of the people that had not hooked up to the system. At the time we did our review they were in the process of trying to identify the specific residents that had not been hooked up. But I really wasn't clear specifically why the residents had not been hooked up.

Mr. Molinari. I think there was some testimony that PSD, the State agency, was in the process of trying to force the homeowners to connect to the system. In your study, were you able to draw any comparisons between user fees in that particular vicinity and maybe others in nearby localities.

Mr. Berman. We tried to compare the PSD approved rate with the approved rates in other districts in West Virginia and they were among the highest.

Mr. Levitas. We will break for a short time while the committee goes into executive session.

[Whereupon, at 10:45 a.m., the subcommittee went into executive session. Following the conclusion of that executive session, the open session of the subcommittee was resumed, and the chairman recognized Mr. Molinari.]

Mr. Molinari. Before the break, gentlemen, I had asked about the evaluation that was made of the engineering plans. It was my understanding that during the course of your inquiry there were several other engineering plans for that project that you had occasion to see. Do you recollect that?

Mr. Berman. No, sir; we didn't.

Mr. Molinari. I am sorry, let me correct that. You had access not to other plans, but engineering evaluations.

Mr. Berman. These engineering evaluations were performed by three independent engineering firms during the operations phase of Malden in order to determine the reasons for plant noncompliance and poor performance. We reviewed the results of these engineering studies to determine what problems these studies identified as to the cause of the problems.

Mr. Molinari. I have just looked at your statement for the first time. Is there reference to those separate engineering evaluations?

Mr. Berman. Not in the overall testimony, but I believe the information has already been provided to the subcommittee.

Mr. Molinari. All right. Would you mind, for the record, expanding upon your investigation of these evaluations and their findings as they relate to the problem?

Mr. Berman. Yes, sir. The study has determined several major causes of the problem. They identified No. 1, design errors by the engineering consultant; power failures; connection of downspouts from residences, causing excessive water to enter the stream; entry of foreign objects into the system by the residents, such as logs, which damaged the pumps; and operations and maintenance procedures by the operator. And in essence, they identify a combination of factors as the causes of unacceptable plant performance, and the basic conclusion by EPA, we believe, was that it was because of all the different reasons that caused the plant performance. It was very difficult for anyone to attribute the problem solely to design errors.

Mr. **Berman**. They were requested by different organizations. One evaluation was requested by the water development authority, another evaluation was requested by EPA, and a different company was heard by the public service district, and essentially, they identified similar problems.

For example, one of the engineering studies was performed by Kelley, Gidley, Blair & Wolfe at the request of the water development authority, who held the long-term bonds for the project.

Mr. **Molinari**. Your testimony suggests various alternatives to the construction grant funding concept in order to resolve the responsibility-accountability issue.

Would you please expand on the suggestion for us?

Mr. **Ganster**. These suggestions have resulted from the study we did in 1980 which attempted to identify the reasons why we had such a significant noncompliance problem throughout the country on municipal treatment systems.

We could not identify any accountable party because of this finger pointing between the grantee, the design engineer, and the EPA region. The Clean Water Act requires that the grantee is primarily responsible for the project's successful completion and operation.

However, because of the way that the management structure is set up between EPA, the State and the grantee, and the grantees consulting engineer, you have various parties that are somewhat accountable for what goes on.

The finger pointing, innuendo statement we made, was based on what we found in our detailed review of several projects.

What we concluded at the end of that was that we need an alternative way of providing grants so that these projects are built properly and operate properly. We came up with three alternatives. One was for the EPA to stay out totally of the operation of the grant and just become an advisor.

The second alternative was for EPA to become a signatory to the contract; in other words, that they, along with the grantee, would be responsible for the successful construction and operation of the project; and third, a turnkey concept, which is where one party like the consulting engineer would construct, plan, design, operate, make sure the thing works and then turn it over to the grantee.

This turnkey concept has been used in other Federal programs, such as housing programs. The Congress did not follow through with our suggestion. What they did in 1981, in the clean water amendments, was to add a section which requires the consulting engineer to stay with the grantee for 1 year after the project is constructed to make sure that it works.

They have to work with the operation and maintenance personnel, get them trained, so that 1 year after the construction is completed, when the consulting engineer leaves, you have a treatment facility that runs right, and it will meet the permit.

The information that we got on the Malden project showed that as soon as they left, there were operational problems, resulting in the permits not being met immediately thereafter.

So, I think the Congress made a good change by requiring the consulting engineer to stay with the projects. We think, though, this turnkey concept and some of the other alternatives would also work.

Mr. **Molinari**. What about the cost effectiveness of that kind of a program? Were you able to determine whether that would increase the costs of construction?

Mr. **Ganster**. Our study did not get into that. It was a funding concept that we were looking at.

Mr. **Wessinger**. As a matter of fact, the report pointed out what we thought EPA should do would be to test these concepts so they would be able to determine whether they are cost effective. It is very possible they could be cost effective, but they should be tested first.

Mr. **Molinari**. In reading the basis for the connection charges, I find that the charges depend upon the amount of income. It is a means test of sorts. In this case, part of the reason for nonconnection is the inability of some of the residents to be able to pay the user charge.

Can you enlighten me as to where that means test came from. Was that something we created in the Clean Water Act under the Construction Grant Program?

Mr. **Ganster**. That was not part of the Clean Water Act.

Mr. **Molinari**. Where does the concept come from?

Mr. **Ganster**. That was an EPA-developed concept. EPA, in 1978, became concerned about the fact that the Construction Grants Program was getting down to these rural communities that had low-income residents in them that were not able to afford some of the user charges that would be resulting from these projects, so they required their regions to make a means test of the projected user charge of these systems as they were being planned, and they used the test of median family income.

If the median family income was at a certain level, it was felt that a certain portion of that income could be used for sewage treatment costs.

It is a test. It is a guide. It does not mean once the median family income test is exceeded, that the project cannot go on.

Mr. **Molinari**. Let's assume somebody is unemployed at the time the project is completed, and assume further, that the person then becomes employed. Is there a followup on the EPA's part or anybody's part to determine whether the income eligibility criteria has changed, so that the amount of user charge annually goes up or goes down?

Mr. **Ganster**. No; there is no study on that. The user charge that we talk about is the amount that has to be paid by the individual after the project is completed.

Mr. **Molinari**. I understand.

Mr. Ganster. These projects in West Virginia range between $19 or $20 a month. The user charges that we are talking about in the testimony relate to a test that is made during the planning stage of the proposal that triggers an action by EPA as to whether to approve the project in the future.

If it looks, during the planning stage, like this is not affordable, based on the income of the residents, then the red flag goes up and certain other considerations have to enter into the decision process, then.

Do we want to go forward with this project? Should we come back with smaller projects or what shall we do here? It is a decision point during the project.

Mr. Molinari. If I understand you correctly, then, what it really is is a determination as to whether the project is economically feasible based on the expected recovery of user fees?

Mr. Ganster. That is correct.

Mr. Molinari. But it doesn't lock anybody into the amount of user fees?

Mr. Ganster. No; those user charges can change as the project goes along. Operation and maintenance fees, as we all know, are getting higher and higher as utility energy costs increase.

Mr. Molinari. At this point, I will defer to my colleague, Mr. Wise.

Mr. Wise. Thank you.

Thank you very much, Mr. Molinari.

Mr. Berman, just a couple of cleanup details. In the dialog you had with Congressman Molinari, he was asking you about the design deficiencies. As I read your report, and I am asking you to correct me if I am wrong, you said that you could not identify all the problems of Malden as being based on design deficiencies and there were other problems that contributed to the total package.

Mr. Berman. Yes, sir.

Mr. Wise. Is that correct?

Mr. Berman. The engineering reports identified other problems in addition to design deficiencies.

Mr. Wise. You are not saying in your testimony, are you, there are no design deficiencies.

Mr. Berman. No, sir; we are not saying——

Mr. Wise. In your examination, did you review the JRB report that had been commissioned, I believe, by the EPA?

Mr. Berman. Yes, sir; that is one of the reports we reviewed.

Mr. Wise. In it, I recall it does cite some design deficiencies?

Mr. Berman. Yes, sir; in addition to other problems.

Mr. Wise. Did you review the second peer review done by Kelley, Gidley, Blair & Wolfe?

Mr. Berman. Yes, sir.

Mr. Wise. As I recall, that cited some design deficiencies?

Mr. Berman. Yes, I believe so. It also identified excessive inflow into the system as a major problem.

Mr. Wise. But I am making the point that design deficiencies are part of the package?

Mr. Berman. Yes, sir; there was some sort of commonality between the three engineering peer reviews that were performed in identifying the same basic deficiencies as the cause of the problem.

Mr. **Wise**. You yourself—when I say you yourself I am talking about the General Accounting Office—did not perform and engineering review?

Mr. **Berman**. That is correct.

Mr. **Wise**. Mr. Wessinger, turning to the financing package of Elk Pinch, you noted one of the factors that contributed to the default on the Elk Pinch was the fact that no one was doing any cash-flow financial analysis.

You refer to that on page 8 near the bottom. Is that cash flow analysis something special or repair in terms of the process, or is it a standard financial and accounting process?

Let me rephrase that.

Should any competent accountant or bank have known proper management of this type of financing arrangement or required this type of cash-flow monitoring and also have known how to do it?

Mr. **Wessinger**. Cash flow is a fairly common statement that is used throughout the accounting profession to show the amount of money coming in and the money going out. It is a fairly typical thing in the accounting profession.

Mr. **Wise**. So it seems to me you are saying that because it is a fairly basic procedure, then should any competent accountant or bank or whomever, knowing proper management of this type of financing require this form of cash-flow monitoring?

Mr. **Wessinger**. In my opinion, I think they should have known.

Mr. **Wise**. They also have known how to do the cash-flow monitoring?

Mr. **Wessinger**. Yes, I think so.

Mr. **Wise**. You note on page 10, at the top of your report, that "both Malden and Elk Pinch grantees lack technical expertise and were inexperienced in grant management," yet the law requires before EPA makes a grant, that EPA has to make a determination that the grantee, and I quote, "has legal, institutional, managerial and financial capability to ensure adequate construction, operation, maintenance of treatment works throughout the applicant's jurisdiction."

My question is, how could the EPA have made this determination in this instance, and were they negligent in this case?

Mr. **Ganster**. We did not do an extensive evaluation of the managerial and technical capability of the grantee. What we looked at was whether the grantee made the proper certification to EPA that they did in fact have, as the law requires, legal, institutional, managerial and financial capability. They did make that statement.

Mr. **Wise**. EPA made that statement?

Mr. **Ganster**. The grantee made that statement to EPA.

Mr. **Wise**. Did EPA?

Mr. **Ganster**. EPA accepted the statement.

Mr. **Wise**. Do you know whether the EPA looked beyond simply that statement?

Mr. **Ganster**. We did not look at that, no, sir.

Mr. **Wise**. On that question, we look forward to hearing from the rest of the witnesses on that issue as we progress.

Mr. Wessinger, you note on page 4 that, and I quote, "Engineering reports indicate that performance problems—" and I am speaking of Malden here—"are due to a variety of reasons, including design error and other factors."

Could you tell us who were the engineers that did these reviews?

Mr. **Berman**. We are talking about Lotepro Corp., which I believe held the license to market the system, JRB Associates, the contractor, hired by EPA region 3 to perform the review, and we are also referring to Kelley, Gidley, Blair & Wolfe, who was hired by the water development authority, I believe, to do their review.

Mr. **Wise**. When were these reviews done and do you know what prompted them?

Mr. **Berman**. I believe these reviews were during the periods 1981 and 1982, and I believe they were prompted by the performance problems being experienced by the plant.

Mr. **Wise**. Shouldn't the things that were being addressed in these reports, design deficiencies, pump station malfunctions, infiltration, whatever, shouldn't they have been caught by EPA or the State when they reviewed all these plans?

Mr. **Berman**. Are you talking about the design of the plan, sir?

Mr. **Wise**. I am talking about overall deficiencies. If we want to focus on the plant, fine.

Mr. **Berman**. I am not sure, sir. Some of these deficiencies or some of the problems that were noted by the engineering study didn't become apparent, until the plant went into operation.

Mr. **Wise**. Did you have occasion to review the peer reviews that were done for the water development authority by Kelley, Gidley, Blair & Wolfe?

Mr. **Berman**. Yes, sir.

Mr. **Wise**. Both peer reviews? Were there not two?

Mr. **Berman**. I am not sure. I only reviewed one of the reports.

Mr. **Wise**. Which one did you review?

Mr. **Berman**. Could I refer to my notes?

Mr. **Wise**. Yes.

Mr. **Berman**. The report I am referring to is dated March 1983.

Mr. **Wise**. The report that you reviewed, in your opinion, did that address itself to substantive issues? Was it a comprehensive review?

Mr. **Berman**. Sir, that would require an engineering evaluation on my part.

Mr. **Wise**. But, you did not review any earlier report?

Mr. **Berman**. No, sir.

Mr. **Wise**. Do you have an opinion as to who is going to pay for fixing up the problems at the Malden plant?

Mr. **Berman**. No, sir, I do not.

Mr. **Wise**. You weren't able to determine this?

Mr. **Berman**. No, sir.

Mr. **Wise**. Did you look at the implications of, if it is going to cost more, where do the costs fall?

Mr. **Berman**. In this case, sir, until the problems are fixed, it is very difficult to do that, so we did not.

Mr. **Ganster**. Could I interject, Congressman?

If these are additional costs that would come about to finance the plant, they would be passed along to the public service district. The public service district would then have to pass along those fees, costs, to the users.

There would be higher user charges to fix the plant, yes, sir.

Mr. **Wise**. So, the users will pay those costs?

Mr. **Ganster**. Yes, sir.

Mr. **Wise**. Turning to page 7, you note in the case of the Elk Pinch project, a scheme was put together to reduce financing costs, that is the interest costs, on the money that would have to be borrowed during construction to pay for the work, until the EPA reimburses the service district, and later, the public service district would issue long-term bonds to cover that local share of the construction costs.

I am not a banker. I believe this is referred to as arbitrage. That the district would take the money they got from the sale of short-term notes to help cover the interest costs of borrowing the money in the first place, and if the whole package, the financial package, is managed correctly, the district would probably not have to pay any interest cost on a net basis, that the interest income would offset the interest expense and the whole thing would at least come out even, perhaps even come out a little bit ahead for the district.

First of all, is that a proper statement of the approach that the public service district used?

Mr. **Berman**. Yes, sir, that was the plan.

Mr. **Wise**. Second, well, something went wrong. What went wrong and why is the district now $1.36 million in the hole?

Mr. **Dougherty**. I think what went wrong, was that the district commissioners were authorizing expenditures that were apparently above budget, spending incomes that never were actually generated. The main problem, was that costs were going up and no one realized what the income was from this financing scheme.

Mr. **Wise**. Who advised those district commissioners to OK these expenditures?

Mr. **Dougherty**. We were told that the consulting engineer during the monthly meetings with the district said, yes, you can expect certain incomes and we advise you that you can pay these bills.

Mr. **Wise**. Who specifically told the commissioners that?

Mr. **Dougherty**. I don't know specifically who told the commissioners that. We were told it was a consulting engineer, but I don't know which person specifically.

Mr. **Wise**. Mr. Dougherty, who relayed this information to you?

Mr. **Dougherty**. We talked to Mr. Hafer, the district chairman.

Mr. **Wise**. Chairman of the public service district?

Mr. **Dougherty**. Yes, sir.

Mr. **Wise**. And when you say the consulting engineer, to whom are you referring?

Mr. **Dougherty**. Kelley, Gidley, Blair & Wolfe.

Mr. **Wise**. Wolfe, I believe? You noted that the arbitrage scheme depends on or was based on a cash flow analysis, that this was prepared by the consulting engineer. As I understand it, the cash flow analysis was not.

Let me ask if you, first, was the cash flow analysis always accurate?

Mr. **Dougherty**. The cash flow analysis was a joint effort between the consulting engineer, who provided their estimates of what the expenditures would be, and Baker Watts & Co., who actually put together the sale of the bonds or the sale of the notes.

Mr. WISE. Once again, was that cash flow analysis accurate?

Mr. DOUGHERTY. As far as we could tell, it was accurate at the time that it was put together. We talked to several people. There were changes made in the expenditure portion of it, and there is a difference of opinion now between the consulting engineer and the financial people as to what were the bases of these changes.

So, we were not able to——

Mr. WISE. Is it clear who made the changes?

Mr. DOUGHERTY. The financial adviser, Baker Watts, made the changes. But on what basis they made them, we don't know. We were told that they were made by a phone conversation at the direction of the consulting——

Mr. WISE. A telephone conversation with whom?

Mr. DOUGHERTY. The consulting engineering firm.

Mr. BERMAN. These telephone conversations were not documented by Baker Watts, and it is difficult to determine who actually provided the source data that resulted in changes in the cash flow analysis.

Mr. WISE. But to the best of your investigative capability, you are not able to determine who supplied that analysis?

Mr. BERMAN. No, that is correct.

Mr. DOUGHERTY. We know that the consulting engineer provided the initial analysis of what the expenditures were going to be, but the financial figures that were used, we don't know where they came from.

Mr. WISE. At this point, let me see if Mr. Molinari perhaps has questions?

Mr. MOLINARI. Yes, I have several questions and I would like to address the first line to Mr. Wessinger.

Mr. Wessinger, I would like to make reference to page 9 of your testimony, where you note that the certification computations that were made by the consulting engineer to the Elk Pinch PSD after May 1983 were predicated on a local share amount greater than the amount in the approved budget because actual costs were higher than approved.

You go on to note, "The consulting engineer could not provide us with documentation showing how the local share amount in the certification was computed or the basis for estimating that additional funds would be available to cover the additional local share costs."

Do I understand your testimony correctly, in that the same engineer who drew up the cash flow analysis was not able to provide you with a basis for estimating that additional funds would be available to cover the local share?

Mr. WESSINGER. It is my understanding that is correct, but I would like to refer to Tom.

Mr. DOUGHERTY. I believe we were actually talking about two items, and cash flow analysis is one instance. That is a set of figures based on what investments would do.

What you have also referred to was a second set of certifications. The requirement was that each month, certifications had to be made by the consulting engineer to the bank, that certain amounts of money should be transferred, and that after these transfers were made, enough money would remain or be expected from the grant to insure that the noteholders were protected.

Mr. MOLINARI. Then, do I understand that he could not show you any documentation for how he determined or computed the basis for making those certifications?

Mr. DOUGHERTY. He went through the procedures which he followed, however, he did not have his documents. He had the actual statements he made the certifications to, but did not have the backup information available.

Mr. BERMAN. Congressman, there were two worksheets involved in making the certifications. One involves the overall computation that as a result of the transfer, you would still have a projected balance of $12.8 million.

There is also a second worksheet involved in how the local share amount was computed. That amount is carried forward into the first computation. It was this latter worksheet that we could not obtain on how the actual local share amount was computed.

Mr. MOLINARI. Why didn't you obtain it?

Mr. BERMAN. The consulting engineering representatives could not find the documentation.

Mr. MOLINARI. Did they look for it?

Mr. BERMAN. We requested this information on three separate occasions. They were unable to find it.

Mr. MOLINARI. Well, it raises a question in my mind as to whether he was fulfilling his contractual or other responsibilities so far as making certifications that were required.

Would you care to comment on that aspect of it?

Mr. DOUGHERTY. Sir, preparing the monthly certifications was his contractual responsibility, which was done. Whether they were done correctly was another case in point.

But his contract calls for him to do these certifications.

Mr. BERMAN. This requirement to perform the certifications was based on the bond and note resolution and not his contract with the district. It was a specific accounting control put in the resolution to protect the bond holders.

Mr. MOLINARI. Well, I am having difficulty understanding the process. If you will bear with me, maybe I can get a better understanding of what occurred here. The consulting engineer is required to go through the certification process. In fact, when you asked for the certification documents, on three separate occasions he was not able to find them. This certainly raises certain questions as to why he wasn't able to produce them.

I would think that most consulting engineers would have a number of copies of that type of document.

The question is, why did he do it? Was he making this up in his own head? It raises the prospect, at least that it was missing because he was not able to substantiate his certification.

How about his own compensation? Did he certify that he should be paid in that certification?

Mr. DOUGHERTY. There were two parts to the certification.

No. 1, the chairman of the public service district had to approve the payment, and the consulting engineer also had to certify the funds. The consulting engineer didn't certify to his own payments, that would have been the responsibility of the public service district chairman

Mr. MOLINARI. He would approve the payment?

Mr. DOUGHERTY. Yes, sir.

Mr. MOLINARI. The request would come from the consulting engineer, he would certify first he performed at a certain stage and requested payment?

Mr. DOUGHERTY. Yes; at the meetings of the public service district, the invoices for the engineering work would be presented to the district commissioners, who would then vote on whether they should be paid or not be paid, then the payment was made.

Mr. MOLINARI. Well, in that case, if you requested this information on three separate occasions from the consulting engineer and didn't get it, why didn't you go to the PSD to find the worksheets which would show the justification?

Mr. DOUGHERTY. I think what we are missing is that the computation we are talking about is not lack of documentation for payment. We are talking about the basis for some figures that were used to make a computation.

We are not talking about support in terms of whether work was not done. It was how the engineering firm computed its local share, how it computed how much the local share would be, and this was based on several factors: moneys in the bank, grants due in.

Mr. BERMAN. Congressman, the certifications that we are talking about involved joint certifications by the public service district chairman and a representative of Kelley-Gidley to the Kanawha Bank, thus authorizing them to make transfers in the grant receipt accounts in order to make payment for project expenses. Through a process of computations, they are providing a certification to the depositor bank that there would be adequate funds at the end of the process after the transfer was made.

We are not talking about specific payments to the contractor or any other contractor here.

Mr. MOLINARI. According to the GAO study, what was the consulting engineer to be paid for his services on the Elk Pinch project?

Was he to be paid for the total job?

Mr. DOUGHERTY. I will have to refer to our notes for this today. I believe the figure is about $1.7 million.

Mr. MOLINARI. That was the original estimate?

Mr. DOUGHERTY. The original, I believe, was about $1.4 million.

Mr. MOLINARI. How did it go from 1.4 to 1.7? What was the justification?

Mr. DOUGHERTY. Change orders and change in work specifications.

Mr. MOLINARI. Requested by whom?

Mr. DOUGHERTY. The public service district as suggested by the design engineer.

Mr. BERMAN. There was also an additional inspection that was requested by the public service district, that partially resulted in some of the change orders for engineering services.

Mr. MOLINARI. Was EPA responsible for any change orders?

Mr. BERMAN. The process in place at the time required DNR approval of change orders if the change orders amounted to more than $700,000. It is referred to EPA region 3 for subsequent approval.

In this case, the specific changes we were referring to for engineering services, have not been submitted to that level yet, because the project was stopped and DNR sent the change orders back, so it is possible, if the project is restarted, that these change orders will go back into the process.

Mr. Molinari. Then let me ask you this one last question.

How much did the consulting firm actually receive?

Mr. Berman. I don't believe we have that figure. We only have the total estimate for services.

Mr. Molinari. You don't have the final cost?

Mr. Berman. We don't know exactly how much money has been dispersed.

Mr. Dougherty. We don't know what he has been paid to date right now. I can provide it for the record.

Mr. Molinari. Do you have any record of progress payments he might have been paid?

Mr. Dougherty. We have what he was paid as of the last accounting period, but I don't have the figures with me right now.

Mr. Molinari. All right, then I would appreciate it, with the chairman's consent, that we hold the record open for the submission of a detailed statement showing payments to that consulting firm to date.

Mr. Dougherty. Yes, sir.

[The information received from Mr. Dougherty follows:]

Approved budget for technical services (approved by the Public Service Commission, May 19, 1981)	$1,450,400
Revised budget estimate for technical services (revised and submitted to EPA by the PSD on Jan. 6, 1984)	2,181,370

The following is a breakdown of the various line items making up the estimated technical service costs:

Basic engineering	$392,000
Inspection	1,105,833
Right-of-way engineering	277,620
Surveying	166,550
Startup services	11,700
O&M manual	39,020
Record drawings	48,770
Redesign	139,877
Total	2,181,370

Amount paid by the Elk-Pinch PSD to Kelley, Gidley, Blair & Wolfe, Inc., as of Nov. 30, 1983	1,952,715

Mr. Wise. Following up on our line of questioning concerning certification here, the certification I am talking about is pursuant to the note resolution, not the certification of invoices for payment to subcontractors and things like that.

Now, please stop me if I get off the track, but I am trying to get us summarized to a point, then ask a question.

So, the PSD [public service district], is supposed to certify to the bank pursuant to that resolution, that they have $12.8 million in that bank and that there is not a deficit; is that correct?

Mr. **Berman**. Yes, sir; it is a joint certification by the consulting engineer and PSD.

Mr. **Wise**. And who would sign that for the PSD?

Mr. **Berman**. The chairman, I believe, Mr. Hafer.

Mr. **Wise**. Now, you have discussed a process for certifying payments. Was that process always followed?

Mr. **Berman**. No, sir; the first two transfers were made by the bank without the required certifications.

Mr. **Wise**. And then turning to page 9 of your testimony, I note that the certification computations made by the consulting engineer to the PSD, after May 1983, however, predicated on local share amount greater than the amount in the approved budget, because actual costs were higher than approved.

In other words—well, let me ask you, does that mean then that the project was running into default earlier than December, when it was called to their attention?

Mr. **Dougherty**. Yes; it does.

Mr. **Wise**. When did it run into default?

Mr. **Dougherty**. We believe in May 1983.

Mr. **Wise**. So, the previous May was when this project was in default of its bond resolution, yet certifications were made each month; is that correct?

Mr. **Dougherty**. That is correct.

Mr. **Wise**. How could those certifications have been made, stating that the terms of the resolution were being complied with?

Mr. **Dougherty**. Because there was no clear understanding on the part of Kelley-Gidley that the local share cost was fixed at a given $4.4 million.

In other words, the bond resolution did not mention that there was any cap on local share and hence, when the local share costs started to exceed what was going to be expected, it didn't raise a flag in anyone's mind. This went on for several months and obviously, month after month, the local share kept expanding in terms of amount, and yet no one questioned it.

Mr. **Wise**. Was there no control over how much this project would cost?

Mr. **Dougherty**. There was an original budget that was set in March 1981 that showed local share as, I can't recall the figure right now, that being the control——

Mr. **Wise**. But the budget, of course, I think you have just testified there were change orders, there were other alterations, I know, from testimony coming up, or looking at my own experience, increases in legal fees, right-of-way acquisitions.

So, are you telling me that everything was done on the basis of a document that was prepared in 1981 and no one was minding what was happening day to day?

Mr. **Dougherty**. The budget was set, and the cost categories we set. For example, engineering fees were $1.4 million in the initial budget. As time went by and the expenditures were made, then you could see that engineering fees were now $2 million, you knew immediately you were $600,000 over budget.

That control existed, but here was no bridge between the budget and the financial plan.

Mr. BERMAN. Could I go back to the question about the transfer certifications and expand on that? There seems to be two things to consider here.

There was a definition of local share in the bond and note resolution, and that definition was used by the bond counsel—Jackson, Kelley, Holt & Farrell—to advise the consulting engineer of the formula that was to be used in making the transfer certification.

We looked at one or two of the earlier certifications for which he did have the local share computation, and the formula was followed in the earlier certifications for computing the local share amount.

The problem is that formula represented an estimate of the total local share amount to be incurred. The problem seemed to occur when you carried forward that amount into the other computation as representing the amount of money expected to be available to cover your costs.

For example, any time in the computation that the amount shown as local share exceeded $4.46 million, in effect, this raised a question as to where the additional money was going to come from to make up that difference.

Mr. WISE. That exceeds, you said, any time it goes above $4.6 million, does that show up in the certifications that are made?

Mr. BERMAN. Yes, sir; at one point during the computation in September and October 1983, the local share amount represented over $10 million, which raises a question, how are you going to make up the difference between $10 million and $4.46 million?

Mr. WISE. It sounds to me then that somebody is plugging in a figure to make the whole thing balance. Is that a correct analysis?

Mr. BERMAN. Sir; we could not, as we testified, obtain the documentation showing how these amounts were derived. We could not determine whether that is true or not. It could possibly be a misinterpretation of the formula.

Mr. WISE. From what you could determine, in your investigation, was there no awareness before December or, let's say, November, because that is when, to my knowledge, the first stirring occurred, that this was going to be a problem?

What about the spring of 1983?

Mr. BERMAN. As we have already testified, sir, cash flow analysis was not performed.

Mr. WISE. Who did the actual calculations for the certification for the consulting engineer?

Mr. BERMAN. Mr. Downey, who was Project Engineer for Kelley-Gidley.

Mr. WISE. You have spoken to him?

Mr. BERMAN. Yes, sir; as well as Mr. Blair of Kelley-Gidley.

Mr. WISE. Did you ask him specifically about that, the local share problem, at any time did it exceed $4.6 million?

Mr. BERMAN. Yes, sir; we did, and he advised us that he was following the formula provided by the bond counsel.

Mr. WISE. I appreciate the gentleman yielding.

Mr. LEVITAS. Thank you.

I have a few questions.

Mr. Wessinger, Mr. Ganster was talking earlier about the desire for some pilot project or testing of the cost-effectiveness of turnkey projects or projects in which EPA was not involved in approval of the various stages.

Have either of you read the report of this subcommittee that was issued in 1981 on the construction grants program?

Mr. WESSINGER. No, sir; I have not.

Mr. GANSTER. I don't recall much about it. I am sure I have read it.

Mr. LEVITAS. I recommend it to you as good reading if you are going to be working in this area, but you will find in that report that we have had rather extensive testimony as to the cost-effectiveness of those particular types of approaches.

We had extensive testimony from various communities, where they did not use EPA sources, but rather purely local sources, and in effect, did a turnkey approach with their consulting engineer that they engaged to design, to supervise, and to implement the program.

In each instance, they built the projects for less money and in a shorter period of time than similar projects had been built at EPA under the EPA program.

So I think you might want to take a look both at the report and the hearing's transcript, documents which are also published in which this testimony appears.

Let me move on to a specific set of questions.

I know Mr. Molinari touched on the question of affordability and where that all arises from. If you testified as to any of this while I was out of the room, let me know and I will refer to the transcript. But what I don't understand is how affordability gets to be a driving force in determining the project itself. Let me explain to you what I mean.

Obviously, cost has to be a factor and cost effectiveness clearly should be. Assume you have a situation in a community which is in violation of the water quality standards and therefore has to put in place certain technology, wastewater treatment plants, in order to come into compliance to clean up the water. And you do your affordability study and you find out that it is going to be more than the benchmark that is provided by the State and Federal guidelines.

I presume at that point you don't say we are not going to clean up the water, we are not going to clean up the effluent because it violates the guidelines.

Mr. WESSINGER. You look for alternatives as to how to accomplish the water cleanup. It doesn't mean you are not going to make an effort to do that. We may not be able to afford what we have seen so far, let's try other alternatives.

Mr. LEVITAS. I will get into that with EPA.

In your report, you say on page 4 that the Malden project is in significant noncompliance, being out of compliance for 28 out of 34 months, and it is also my recollection that EPA's criteria are more stringent than your criteria for determining noncompliance. EPA uses a 40 percent limit over the current requirement and you have looked at projects as being in significant noncompliance when they exceed their permits by 50 percent.

If that is the case, then you would have to say that the Malden project is not just out of compliance, but is a real poor performer by any definition. Is that correct?

Mr. **Wessinger.** That is correct, yes.

Mr. **Levitas.** If the project is so poor, why hasn't anybody done anything about it? Doesn't the State or the USEPA have some responsibility in this area?

Mr. **Berman.** Over a year ago, EPA delegated compliance monitoring to the State of West Virginia Department of Natural Resources, so they have the specific responsibility now for monitoring permanent compliance here.

Mr. **Levitas.** I get the impression that as long as Congress keeps funding these programs, regardless of whether they are achieving the results that we think we are paying for, that people are going to continue to operate in the same way.

Did you want to add something, Mr. Ganster?

Mr. **Ganster.** Yes; we did not look into the reasons why nothing was done on this particular project. We limited our study to obtaining the statistics from EPA as to whether the permit limitations had been met, and if they had not been met, what were the exceedences. We did not follow through to find out why no enforcement had been taken.

Mr. **Levitas.** Well, I think again we are going to have to get into that with EPA and the State witnesses on this matter because it seems like nobody seems to care that we have $20 million invested in a plant that is not working and we are just going to go on and build the next one that is not going to work, I suppose.

It was pretty clear in your own testimony that it was not a serious problem to merit enforcement by State officials. In fact, didn't they tell you that?

Mr. **Berman.** Yes; that is correct.

Mr. **Levitas.** I wonder how people around the country would feel if they knew that is the way their tax dollars were being spent.

Mr. **Berman.** Could I correct what I said?

It is not that they said it wasn't serious enough. They were talking about its significance relative to other projects.

Mr. **Levitas.** As bad as this was, there were worse problems out there. Were those projects also funded with Federal funds?

Mr. **Berman.** I am not sure what projects they were referring to.

Mr. **Levitas.** Is there a performance bond required of either the contractor or other professionals involved in the building of these projects?

Mr. **Wessinger.** I don't know the answer to that.

Mr. **Levitas.** On page 6, you note that the Malden district is not setting aside funds for eventual replacement of the plant and that places it in particular violation of its bonds. Now, is this like, in the case of the Elk Pinch, due to poor financial management? Could you elaborate on that?

Mr. **Berman.** This was a county requirement from the water development authority in its resolution selling them the bonds to establish a sinking fund reserve and they have not funded the sinking fund reserve. This is not an accounting or financial control. They have not established the sinking fund reserve.

Mr. **Levitas.** And that places them in technical default?

Mr. **Berman**. Yes; that is one of the conditions.

Mr. **Levitas**. Is this a result of oversight or poor financial management or——

Mr. **Berman**. They said they didn't have the funds to establish this reserve, to fund this account because of the cash problems they were experiencing.

Mr. **Levitas**. I have no further questions at this time. We will hold the record open as the gentleman from New York requested for, say, 14 days to provide additional information, without objection.

I might announce to the members that there is in process a live recorded quorum occurring which may be followed by a vote on the Lowery amendment, as I understand it, so we will be occupied on the floor for some period of time.

If there are no further questions to this panel of witnesses, then when the committee recesses for the vote, you will be excused. And therefore, because of the delay that we are going to have voting, it might be a good time to take our luncheon recess at this point and so the subcommittee will stand in recess until 1:30 p.m.

[Whereupon, at 12:00 p.m., the subcommittee was recessed, to reconvene at 1:30 p.m., the same day.]

AFTERNOON SESSION

Mr. **Levitas**. The subcommittee will please come to order.

Even with the intervening vote, we are almost on schedule, so I think that is good so far.

Before I introduce and welcome our next panel of witnesses, I want to make one comment about the testimony of the General Accounting Office because the two most disturbing things that I heard in their testimony was that even after the rather graphic description of the problems that were being faced by the treatment plant in Malden, that the state did not consider it the worst problem and therefore they were unable to place it high enough on the list of the priorities.

I am sure that many people who just heard that testimony had the feeling that if that is not the worst problem and there were worse problems, then the State has really got its hands full. If that is not bad, no telling how bad "bad" really is. But even more disturbing than that was the statement that was contained very early in the testimony of Mr. Wessinger, which was that the plant in question was built strictly in conformity and in accordance with EPA regulations.

Think about that. That says that they built it according to the way it is supposed to be built and in accordance with their regulations, and now we see the fact that the plant is not operating and not operating in compliance; that as recently as last year, 20,000 gallons per day of raw sewage were being put into the waters of West Virginia over and above that which was being put in because the plant wasn't working and yet it was built in accordance with the regulations prescribed by the agency of Government that is supposed to be protecting the environment.

If that is the result of building something in accordance with the regulations, God help us with respect to those which are built in violation of the regulations.

So I think these are some of the things that I came away with from this morning's testimony in addition to the very specific issues that arose with these two particular projects.

Our next panel are people who are very closely involved with this situation and I know share the concerns that Congressman Wise and this committee have with respect to this matter, and who I believe will be able to help our committee in finding some answers to the questions I think we have raised up to this point.

I want to express my appreciation to each of the individuals who are with us now for their presence here, knowing that they have dedicated themselves to an objective which is very important to all of us, and we look forward to hearing from them.

We have at the witness table now the Honorable F. Douglas Stump, president of the Kanawha County Commission, Charleston, WV; and he is accompanied by Charles L. Gates, manager of the Malden Public Service District; and Robert S. Evans, commissioner, Elk Pinch Public Service District.

Also at the table is Thomas Blair—is Mr. Blair here? I think it might save time, Mr. Blair, if you would join this panel, unless there is some reason not to. I think it would save time.

Mr. BLAIR. Absolutely, sir.

Mr. LEVITAS. I think it will give you an opportunity to join in with this discussion.

Anyway, Mr. Stump—also, I see Mr. Jarrett, commissioner of the Elk Pinch Public Service District; and Mr. Clark, director of the planning and community development commission.

Mr. Blair is with Kelley, Gidley, Blair & Wolfe, consulting engineers, Charleston, WV.

Mr. BLAIR. I am accompanied by Mr. Downey, the vice president of Kelley, Gidley, Blair & Wolfe.

Mr. LEVITAS. We appreciate that.

If I may ask each of you please to raise your right hand so I can administer the oath.

[Witnesses sworn.]

TESTIMONY OF F. DOUGLAS STUMP, PRESIDENT, KANAWHA COUNTY COMMISSION, ACCOMPANIED BY CHARLES L. GATES, MANAGER, MALDEN PUBLIC SERVICE DISTRICT; ROBERT S. EVANS, COMMISSIONER, ELK PINCH PUBLIC SERVICE DISTRICT; BERNARD CLARK, DIRECTOR, PLANNING AND COMMUNITY DEVELOPMENT COMMISSION; WALTER JARRETT, COMMISSIONER, ELK PINCH PUBLIC SERVICE DISTRICT; AND THOMAS BLAIR, PRESIDENT, KELLEY, GIDLEY, BLAIR & WOLFE, CONSULTING ENGINEERS, ACCOMPANIED BY JIM DOWNEY, VICE PRESIDENT, KELLEY, GIDLEY, BLAIR & WOLFE

Mr. LEVITAS. In accordance with the rules of procedure of the subcommittee, I would like to advise each of you that on the table in front of you is a copy of the rules of the subcommittee and the committee and the House of Representatives with respect to investigative hearings and you are also entitled, under the rules of procedure, to be accompanied by and consult with counsel, if you so desire.

With that, gentlemen, Mr. Stump, I will recognize you and look forward to your testimony.

Mr. STUMP. Thank you, Mr. Chairman and members of the subcommittee.

You asked me in your letter to explain briefly to the committee the function of public service districts in the State of West Virginia, particularly in the county of Kanawha. I will tell you how the Kanawha County Commission is involved with public service districts.

The State law of West Virginia requires the county of Kanawha to create public service districts for the purpose of furnishing water and sewer service to rural, unincorporated areas which cannot be served by the merging or expansion of existing public service districts. At that point, the PSD becomes a public corporation and a political subdivision of the state, and is, for all practical purposes, governed solely by the board, which is composed of three members, volunteer citizens, who must reside within the district that they sit upon.

After its creation, the commission can either reappoint or remove commissioners for cause, or it can enlarge or reduce the physical boundaries of the district. Otherwise, this board makes all decisions, both administrative and financial, for the district.

There are four federally funded sewer projects with a total commitment of local, State, and Federal tax dollars in excess of $60 million in Kanawha County—Malden, Elk Pinch, Sissonville, and Big Sandy—within 10 miles of the State capital of West Virginia, and they are all in trouble. We are here today to discuss some of the specific problems encountered in the Malden and Elk Pinch disasters—so I will not belabor the obvious.

Aside from the appalling misuse of tax dollars, the most alarming feature of these two projects to Kanawha County is that they are not exceptions. The same set of mistakes are being made right now by the same set of players in Big Sandy and Sissonville, and the Kanawha County Commission is waging an unpopular and probably unsucessful battle to try to avoid the faults in the system. When I ask that Federal regulations be followed, specifically in the case of acquisition of land for rights-of-way, I am accused of being "antisewer," when in reality I am merely "antiwaste." When I recomend turnkey methods of construction of sewer projects, I am also criticized by State officials.

One of my first actions after election to the commission in January 1983 was to begin to implement a more aggressive involvement in the Malden and Elk Pinch projects than had been employed by the Kanawha County Commission in the past. I developed an extremely close, and I believe effective, working relationship with Congressman Bob Wise and his staff, and began to regularly attend the monthly meetings of these two PSD's to see if there was any way in which the county government could be of help. I appointed new members to the PSD boards of Malden and Elk Pinch, and the two members I have with me today are two members that I appointed to Elk Pinch, and began with the help of information provided by Congressman Wise to fully understand the gravity and the complexity of the problems faced by these two districts.

Numerous studies had been done of the Malden project. Design deficiencies and excessive infiltration and inflow were two of the major problem areas identified by all the reports available. Malden's efforts to bring their plant into compliance with their NPDES permits are hampered by lack of sufficient money in their operating budget to make the necessary repairs or to provide the required amount of manpower to properly operate and maintain the system.

By utilizing the summer work force made possible by the jobs bill, the commission furnished the manpower necessary to complete a large portion of the smoke testing which was necessary to identify those houses with illegal downspouts hooked into the system. We also designated $37,000 from the contingency fund of the county commission's revenue sharing money to the district to be used to pursue legal proceedings against their consulting engineers.

Even though the Elk Pinch project was not in operation, it had been benchmarked and documented for more than 3 years by reports by citizens' groups, the public service commission and the office of the inspector general.

The Kanawha County Commission assigned the director of community planning and development, Mr. Bernard Clark, the monumental task of sifting through the numerous sets of conflicting numbers, the engineering data, and the voluminous material available in Congressman Wise's district office. We asked Mr. Clark to work closely with the PSD commissioners to try to formulate a solution to their problem, which was to complete the project with the user rate which had been projected.

After a year of meetings, negotiations and community polarization, the project was stopped because it quite literally was broke. The proposals then began to appear by many agencies to address the $1.3 million deficit. But all the proposals had one thing in common—the user eventually paid for the agencies' mistakes, and this was unacceptable.

Mr. Clark then began to work through the numbers and has formulated a plan of action for the district which will allow the project to be completed and to go into operation in phases, thereby generating revenue and solving the community's pollution problems, a large portion of which was caused by the project itself.

There will still be a deficit, but one which is manageable and which may be nullified by judgments issued from litigation. Towards that end, the Kanawha County Commission has designated $40,000 for use by the district for legal fees, and a $60 million lawsuit against the consulting engineer and the underwriters was filed on May 4, 1984.

Mr. Chairman and members of the subcommittee, the Elk Pinch Public Service District commissioners are doing everything in their power to proceed toward completion of their project. However, every step of their progress seems to involve complicated and time-consuming negotiations with the EPA, DNR, WDA, MBIA, and A/E forms and requirements. None of these obstacles existed when the project was running wild. During that time period, things were inspected, certified and paid quite smoothly. Now that sound fiscal management is being exercised for the first time they find nothing but problems. Yet, one of the first accusations leveled by EPA was that the PSD had not been a "responsible grantee." The current situation seems to imply that the preferred definition of "responsible grantee" is "silent partner."

A clear and definite health hazard now exists in this community of Elk Pinch, and the West Virginia Department of Health has placed a moratorium on all development and all water taps. But interestingly, just before I came here, the West Virginia Department of Health issued an exemption certificate to a large business enterprise for 28 homes on a separate system, 28 condominium homes. The PSD has repeatedly asked the Federal Government for help, and have repeatedly been denied or given evasive answers to specific questions.

I, as president of the Kanawha County Commission, have gone so far as to plead with President Reagan for help, and I was referred to region III, EPA, the original source of our difficulties. Not surprisingly, Mr. Eichler's answer to me was the usual blase, bureaucratic, "Newspeak." I would ask that you examine this correspondence.

Mr. Eichler stated in his response to me that EPA, someone had a plan that would in fact lower the Elk Pinch project. I responded to him that it had passed everybody in the State of West Virginia and please send it back because we would like to read it.

It is indicative of the total lack of communication and understanding between the Federal funding agency and the local governmental arm dispensing the money. We have asked for help and guidance, and have received vague meanderings sprinkled with threats of enforcement.

Thus far, the county has been the only level of government to offer practical, immediate assistance to any of the PSD's. We plan to continue and to work toward centralization and consolidation of management in the future. However, quite frankly, we have gone about as far as we can financially on the Malden and Elk Pinch projects. Federal law, Federal regulations and Federal tax dollars created these problem projects. The dilemma in which they now find themselves cannot suddenly be attributed to local mismanagement. When the fox orders, designs, and builds the chicken coop, you can't expect the chickens to like it.

As I have tried to briefly and scantily state, I have been deeply involved with the subject of the construction grants program for quite some time, not only because of my elected position, but also because I live in one of the problem projects. I would like to share any specific information and/or local perceptions which I might possess with the members of this subcommittee if you so desire.

Thank you, Mr. Chairman, for the privilege of appearing here today and thank you, Congressman Wise, for becoming involved.

Mr. LEVITAS. Thank you very much, Mr. Stump. I appreciate your testimony and the perspective that you bring to this particular discussion.

[The information received follows:]

ATTACHMENT NO. 1

M-E-M-O-R-A-N-D-U-M

To: Warren Means, P.E.
From: Fred Hypes, P.E. FH
Date: December 23, 1983
Subject: Elk-Pinch PSD Office Closing

This morning at 8:30 a.m. I was informed by Charles Strickland, EPPSD coordinator, that all records had been removed from the EPPSD office. These records include U.S. Dept. of Labor certified payrolls, inspector's logs, approved plans and specifications, checks and cash for tap fees, transcripts of meetings, video tapes of the project, contractors' periodic estimates, EPA payment records, financial records, change orders, complaint forms, telephone logs, etc; in short, everything needed to complete and close-out this project. He requested that I personally visit the office to verify that the records had been removed. I immediately drove to the PSD office.

Upon arriving at the EPPSD office, I was met by EPPSD Commissioners Ed Hafer and Bob Evans, and also by Charles Strickland. Shortly after my arrival, Walter Jarrett, the third EPPSD commissioner, arrived at the office. I asked Mr. Evans where the records were and why they were removed and was told: 1) the records are "secured"; 2) I would be shown the records on a need-to-know basis and; 3) the commissioners had the right to do "what they pleased with these records, so long as they weren't destroyed". In addition to removing records, on December 22, Mr. Evans, Mr. Jarrett and Mr. D. K. Noble, PSD public relations man, removed and hauled away desks, chairs, cabinets, the video tape player and viewer and all other articles from the office during my inspection on December 23.

While the furniture was being removed, Mr. Jim Smith, owner of the building housing the PSD office, came into the office and inquired as to the nature of the work going on. Mr. Evans stated that the office was "closed" and that all district property was being removed and secured. Mr. Smith stated that he was puzzled by this action since he had publicly (12/18/83 Charleston Gazette) stated that he would not collect December's rent or charge for the month of January. He went on to say to everyone present that if the PSD needed 6 months or a year to straighten out its finances that the office could remain in its present location WITHOUT CHARGE. Further, except for telephone service, all utilities are provided by Mr. Smith. In spite of this offer, Mr. Evans, Mr. Jarrett and Mr. Noble continued to remove furniture, etc. from the PSD office.

I was able to ascertain, third-hand, that the records and furniture are being stored at the Pinch PSD Water Office. However, I was not able to observe the actual storage and handling of the records and so cannot comment as to whether they remain in a usable form or not, however they were in excellent shape before they were removed from the office. After seeing how the remaining furniture and equipment was transported from the EPPSD office, I have a fear that even though the records may be "secured", they are not in a form suitable for use. These records will be required for my January 3, 1984 inspection and I intend to see every document concerning this project. If the records are not in a readily accessible and able form, four significant areas of concern immediately become apparent:

1. Dept. of Labor, Wage & Hour Div. certified payrolls. Claims by workers against contractors has resulted in EPA withholding approximately $54,000 in payments from the PSD so far. Other claims may be forthcoming so the records are of vital importance in settling such claims.

2. Inspectors daily reports, which document the day to day activity on the job, quantities, construction methods, complaint resolution, etc. These records will be required for final quantity adjustment and claim resolution. They cannot be replaced (there are no copies).

3. Preconstruction video tapes of the project. These video tapes have proven themselves to be invaluable in preventing, or settling, construction claims on the project. Portions of the sewer system have been completed since the fall seeding season and ±2,000 lf of sewers remain to be constructed. Undoubtedly, some of the video tapes of these areas will need to be viewed if construction resumes in the spring. In addition, major lawsuits have been filed against contractors and the PSD because of construction related damage; the video tapes will be required when these suits go to trail. No copies of these tapes are available.

4. EPA grant documents, payment requests and other accounting documents. These documents will be vital to a quick close-out of the project.

It should be noted that closing the PSD office is a violation of the PSC order giving a Certificate of Need and Convenience. This order mandated that an office and project coordinator be maintained until the project is completed. As of this date, the project is not complete.

Closing the PSD office and removing the project records from that office are the latest of a long string of irresponsible actions undertaken by two of the Elk-Pinch PSD commissioners since late July of this year. Some of these actions include: 1) Not paying some of the Contractors for work performed since June 1, 1983, 2) Not authorizing a change order for 2,000 lf of required sewer construction to complete the project, 3) Not hiring a plant operator at 50% completion (plant is 70% complete), 4) Shutting down the entire project on December 17, even though less than $1 million would completely finish the project. These actions constitute major crisis creation on the part of the EPPSD and the time has come for action on DNR's part. The EPA has put forward some $13.4 million for the project; the state and county smaller but still significant amounts. To allow a capital investment of some $20 million to rot in the ground as has been suggested by Congressman Bob Wise's assistant, Libby Squire, is not only unconscionable but irresponsible on our part. The DNR should not stand by, and thus condone, the irresponsible and misguided decisions of two PSD commissioners to financially wreck the project and thus increase customer bills by 100 to 200 percent. Therefore, I recommend the following actions to complete the project and initiate operation of the EPPSD sewer system:

1. Contact the Health Dept. and PSC immediately about imposing a construction moratorium in the PSD.

2. Take enforcement action against the owners of all treatment plants within the PSD that are not meeting current permit standards.

3. Initiate a media campaign to inform the residents of the PSD of the above actions and also to rebut and refute the half truths and misinformation being given to the media by Kanawha County Commissioner F. Douglas Stump and Congressman Bob Wise. The DNR has taken a beating in the media about our lack of action throughout the project. I feel that our performance has been excellent, and has gone far beyond the EPA delegation agreement and, infact, went further than any government agency usually goes in any sewer project. Standing by and saying nothing only enhances the image of a do-less and ineffective bureaucracy that has screwed-up on this project.

4. Force EPA to enforce the conditions of the Step III grant (i.e. the Grantee will initiate and complete construction in a timely manner) by court action if necessary before ineligible costs caused by the shut-down become excessive and the large rate increase that Mr. Stump and Congressman Wise are predicting really does become necessary.

In summary, swift, decisive action must be taken by a responsible agency in order to ever complete this project. We can no longer use the standard cop-out of "the Grantee is ultimately responsible" on this project, as the Grantee has shown by his actions to be irresponsible and incapable of finishing and managing the project. Procrastination on our part will only hinder the completion of the project. Further, if we do not get this project completed and operating, the future of the Construction Grants Program in West Virginia will be in doubt and thus lost.

ATTACHMENT NO. 2

John D. Rockefeller IV
Governor

L. Clark Hansbarger, M.D.
Director

State of West Virginia
DEPARTMENT OF HEALTH
CHARLESTON 25305

April 2, 1984

F. Douglas Stump, President
Kanawha County Commission
P.O. Box 3226
Charleston, WV 25332

RE: Elk-Pinch Public Service
District, Kanawha County

Dear Commissioner Stump:

The sanitary survey within the Elk-Pinch Public Service District as mentioned in my letter of March 6, 1984 has been completed. As noted earlier, the survey was performed with the assistance and cooperation of the Kanawha-Charleston Health Department. A copy of the report is attached, for your information.

At a meeting on March 29, 1984 the report was reviewed by myself and staff members of the State Health Department, Kanawha-Charleston Health Department, Division of Water Resources, Department of Natural Resources and the office of the Attorney General.

Due to the potential health hazards and the problems within the Elk-Pinch Public Service District, a decision was made to proceed as follows:

1. A moratorium on installation of septic tank, soil absorption systems within the Elk-Pinch Public Service District would be established by the State Health Department.
2. Joint action by the State Health Department and the Division of Water Resources, Department of Natural Resources would be taken against the owners and operators of approximately 30 subdivision and establishment sewage treatment plants which are not being properly operated and /or not being kept in operating condition.
3. A letter will be directed to the Elk-Pinch Public Service District by the Division of Water Resources informing the district to remove raw sewage from its lines or to have the collection and treatment facilities fully operational by September 1984, the contract completion date.

4. A joint letter from both the Health Department and the Department of Natural Resources will be directed to the Elk-Pinch Public Service District informing the district of the safety hazards existing at the plant site and to the potential damage to very expensive equipment already in place. The letter will require that fencing of the plant site be accomplished to minimize the existing safety hazards.

The Kanawha County Commission will be kept informed of all actions as they proceed and will be furnished with copies of all necessary orders and correspondence.

We wish again to acknowledge the assistance and cooperation of Dr. Seekford and staff of the Kanawha-Charleston Health Department.

Sincerely,

L. Clark Hansbarger, M.D.
Director of Health

LCH/drc

cc: Department of Natural Resources
Kanawha-Charleston Health Department

To: William W. Bradford, Chief
Wastewater Division

March 26, 1984

From: C. Russell Rader CRR
Assistant Chief, Wastewater Division

RE: Elk-Pinch PSD
Sewer Evaluation

During the 1970's the State Health Department and the Kanawha-Charleston Health Department were quite busy trying to keep up with new development in the Elk-Pinch area. The State Health Department approved a number of package treatment plants during this period, while the Kanawha-Charleston Health Department was dealing with existing sewer problems and new septic tank installations.

By the mid 70's, the number of failing septic tank systems had become a major concern to both the state and Kanawha-Charleston health departments. The Kanawha-Charleston Health Department performed sanitary surveys of the Knollwood area and Elk Hills area, the results of which showed 80 to 90% failure rates for septic tank systems. These failure problems coupled with the number of community overflow lines discharging raw sewage to the Elk River from such areas as Pinch, Elk Forest, Durham Heights and Crede increased to the point of becoming a potential health hazard. The State and Kanawha-Charleston Health departments contemplated instituting a moratorium on installation of septic tank systems within the area constituting the PSD. However, when it became apparent that the Elk-Pinch sewer project would be built, no restrictions were established by either the State or Kanawha-Charleston Health Departments.

The construction of the Elk-Pinch project meant:

1. Large quantities of sewage would be removed from a major recreational stream.

2. Sewage surfacing on the ground from failing septic tank systems and sewage discharged on the ground would be removed.
3. The Pinch-Quick water supply and the water supply for the Kanawha Valley would be better protected, and potential health hazards abated.

After the project was let and under construction, many of the 30 small sewage treatment plants within the Elk-Pinch PSD received little or no maintenance and operation. Also, few legal actions were taken by the Kanawha-Charleston Health Department because of the construction of the new sewer system and because the major portion of the failing septic tank systems could not be corrected on site. Upon stoppage of the nearly completed Elk-Pinch sewer project in December 1983, the services of the State and Kanawha-Charleston Health Departments were requested by both the Kanawha County Commission and the Division of Water Resources to determine the potential effect of project termination on public health.

In late February 1984 the State and Kanawha-Charleston Health Departments began a survey of the Elk-Pinch PSD area. The thrust of the survey was to define the health problems relating to the new sewer construction and to check the status of the previous health problems.

The scope of the survey was to define the existing health problems, connections into the new sewer system, health problems caused by the new sewer system and only the obvious major construction problems.

Four survey teams were formed of two state health department engineers and six county sanitarians. After prints (as bid) were obtained from the engineer (Kelley, Gidley, Blair, and Wolfe), the twelve contracts (10 on collection lines, 1 on lift stations and 1 on sewage treatment facilities) were broken down for field review.

Each team took a contract or section of a contract and proceeded to walk all of the sewer lines while checking all key control manholes and several random manholes. During the survey period (February 29, 1984 through March 9, 1984) approximately 300 to 400 manholes, 12 lift stations, and the nearly complete sewage treatment facilities were inspected. All 30 existing small sewage plants were inspected and 47 manholes at key control points were sampled and samples sent to the Hygenic Lab for analysis. This involved the walking and checking of about 50 to 60 miles of sewerline construction.

The following is a breakdown of problems that were noted in each of the various contracts:

General

The results of all the samples show through the low fecal counts that some small amount of raw sewage is in the new sewer lines and consequently overflowing to the river. It is readily apparent from the low counts that the number of sewer connections is small. However, if the sewer system is left unfinished, more connections will be made as people will want to eliminate on-site sewer problems. Also as the sewer tap markers are in jeopardy of being lost, connections may be made to save location problems at a later date.

Contract I - Knollwood Area

Some small amounts of sewage appeared to be present. Infiltration varied from area to area. Lower line checks revealed about 1" to 1¼" of infiltration, etc. flow.

Contract II - Elk Forest, Dutch Road Area

Elk Forest and Dutch Road may possibly have some small amounts of sewage in the lines. Elk Forest; very little infiltration . Dutch Road area; some infiltration. Some flows were milky to rusty in color.

Contract III - Elk Hills, Miliken Areas

Both areas appear to possibly have some small amounts of sewage and both have some infiltration. The Miliken area contains the 2000' section of unfinished sewer line.

Contract IV - Big Chimney and Little Sandy Areas

Both areas appear to have some small amounts of sewage in the lines. Both areas have little infiltration.

Contract VI - Elkview, both sides of river

Both sides have possibly some small amounts of sewage and small amounts of infiltration in the lines.

Contract VII - Pinch Area

There was very little sewage in lines. Small amounts of infiltration were noted.

Contract VIII - Pinch-Quick

Interchange area; there were small amounts of sewage in the lines as well as small amounts of infiltration.

Contract IX - Indian Creek (Lower Pinch) area

There appeared to be very small amounts of sewage in the lines and some infiltration.

Contracts V and X - Main Interceptors

Most of the above contracts connected into these two interceptor contracts and there appeared to be some sewage in the interceptor lines as well as a fair amount of infiltration. There were a number of places that overflow was occurring from the manholes in the interceptor lines into the river. The drainage could eventually cause problems with undermining of the interceptor along the river bank.

Contract XI - Lift Stations

Inspection of the lift stations indicated a fair amount of infiltration in the system. All of this water appeared to have some small amounts of sewage in it.

Contract XII - Sewage Treatment Facilities

One unit (contact stabilization process) appears to be within a few weeks of being operational while the other unit could be operational within a month or two.

In addition to inspection of the newly constructed system, the package treatment plants listed below were inspected (see attached inspection reports) and were generally found to be in poor condition with very few having a good quality of effluent and chlorination or the proper degree of treatment required under current standards. Many of these treatment plants are providing effluent that is barely beyond primary treatment standards. The daily flow from the existing sewage treatment facilities is in excess of 300,000 gallons per day. The treatment plants are as follows:

Benson Park
Shoal Elementary
Board of Education (Warehouse)
Maytag and DQ
Givens MHP
Hidden Valley (1)
Wild Wood Lagoon
Elkview MHP
Jackson Apartment
Airport MHP (2)
Todd Carter Subdivision
Shirkey Subdivision
Elkwood (Elkview)
Idlemass Subdivision

Elkwood (Big Chimney)
Country Kitchens
Owen Special Education
Big Chimney Elementary
Hoover Apartments
Hidden Valley (2)
Elkview Shopping Center
Elkview Jr. High
Airport MHP (1)
Youngs MHP
Seneca Hills
Mountaineer Heights
Pinch Elementary
Hickory Hills

Rolling Meadows (1) Rolling Meadows (2)

Walnut Acres

When the survey started it was decided to try and locate the existing failing indiviaual, on lot, sewer systems. On the first day of inspection (of the new sewer line) the number of failing systems was too numerous to mark. It appeared that at least 50% of the existing septic tank systems are having problems such as overflows, failures, laundry discharges, etc. When the number of overflow lines and community collector lines are considered approximately 80 to 90% of all homes in the Elk Pinch-Area have improperly functioning sewage treatment systems (septic tank, collector line, community collection system, etc.) This percentage was higher than the expected 50 to 60% because of the extreme number of overflow lines noted (1) previously by the health department, (2) by the engineer and (3) by the contractors during construction. The general attitude of the public in this area is, that, if sewage is not in their yard on the surface then there is no problem. Our inspection noted several community overflow lines along the river and two broken sewer lines on the collection system in the Knollwood area. The stream coming out of Knollwood was very black where it discharged into Elk River.

The exceptionally large number of failing septic tank systems and/or overflow lines is not particularly limited to any one area, but is common to all areas within this combined P.S.D. Overflows are the case, not the exception in this area.

After the new sewer system was checked for sewage connections, public health problems, etc., approximately 42 points of potential pullution were sampled on March 7, 1984 with 5 samples to be taken around March 11, 1984. These samples were taken at points showing potential pollution problems and at key control points such as the last manholes before the lift stations and man holes from which effluent was discharging into the river.

Several weird items were noticed during the inspections and sampling:

1. Sewage flow was noted, then when sampling no flow occurred.
2. Water was coming in around steps in some manholes.
3. The old collection system was broken and failing in Knollwood Area.
4. Sink holes beside some manholes were noted and some backfilling of lines was settling.
5. Material was noted flowing in sewer line, but did not appear in the line downstream.
6. Some manholes overflowing in areas where they should not, not the lowest point in the line.
7. liquid was near top of manholes when checked and several feet lower when sampled.

After reviewing the entire area, there are certain health problems that must be noted:

New Sewer System

Liqufd is backing up in the system causing problems by discharging to the Elk River. This water in several instances will, more than likely erode the creek bank and may cause damage to the new sewer line. Also any build-up of solids in the lines may cause future sewer line clogging resulting in back-ups into some homes.

In a period of low flow (drought), future possible concentration of pollution in river could cause major problems with the two water intakes.

Many new homes are started on lots not capable of supporting on-site systems. A lot of real junk property is being developed and/or put up for sale because of the construction of the new sewer line.

Also the Kanawha-Charleston County Health Department has approved several loans with failing septic tank systems because the new sewer was being constructed.

Old Systems

None of the community systems appear to have been looked after since construction started on the new sewers. The package treatment plants are getting in worse and worse operational condition. The local health department has been lenient on the upgrading of failing septic tank systems. In most areas everyone had sewer problems, so no one filed complaints for corrections.

New Plant

The new sewage facility represents a health and liability problem by not being properly protected.

General

If this project is not put in operation shortly so that proper maintenance can be done, costly damage to all equipment will occur. If electricity is cut off, damage to all controls in the lift stations will occur. Deterioration of steel and equipment will occur if operation and maintenance is not provided. Vandalism of lines, manholes and etc. will occur. Replacement of equipment neglected will only add to the cost of this project.

Contacts were made to several parties associated with this project during my investigation. Those contacts and comments are as follows:

George Watsonof Kelley, Gidley, Blair & Wolfe

Referred to his field notes and as-built prints. He felt that the construction did not create any new sewer problems nor will it correct any until it is made operational. He felt the systems were well constructed with few sewer connections.

Paul Thompson of Mosser Construction

Sewer plant constructor realizes liability and vandalism of unfinished, unprotected sewage plant. He has tried to protect the motors, etc. and is making regular checks on the site.

Mr. Hafer - Elk-Pinch Chairman

Mr. Hafer feels same old sewer and health problems are still existing and will only get worse if the new system is not completed.

Vernon Withrow of Valley Development Corporation

(Contracts 6 & 7) Made note of the large amount of failing septic tanks and raw sewage on the ground. All sewer problems caused by construction were corrected.

George Smalley of GE Ray, Inc.

(Contracts 1, 8, & 10) Noted the large amounts of raw sewage, community collection lines and overflow lines to the river. Also, they corrected the sewage problems caused by construction.

Ron Spradling of Rover Construction

(Contract 5) Also noted large amounts of raw sewage and large number of overflow lines to the river.

After considering the fieldwork, sampling and the existing sewage problems, there are several health considerations:

Stream Pollution - the Elk River is a recreational stream consequently subject to boating, swimming and fishing. Personal contact with the contaminated waters, especially in near draught periods, can cause various diseases.

Mosquito problems - Sewer lines containing sewage/water, the uncompleted sewer plant having stagnant water in it and the raw sewage on the ground present major mosquito breeding areas and subsequent problems. Should the Kanawha-Charleston Health Department stop it's mosquito spraying program, a serious health problem could occur.

Primia Facia Sewage Problems - The existence of raw sewage on the ground as in the case in this entire area is a violation of the law and by definition is a health hazard. The raw sewage on the ground presents potential health problems from a number of diseases: hepatitis, typhoid, dysentery, Gastroenteritis, and Giardiasis.

WV Water Company and Pinch Water Company - The main health problems are directly concerned with these two water supplies that supply approximately 250,000 people in the Elk and Kanawha Valleys. With the existing pollution going into Elk River, we are flirting with a health disaster if there would be a power failure or human error during a period of low flow in the Elk River. As time goes on, as more and more taps are made to this non-operational system, the more likely it is that these concentrated discharges will cause excessive pollution and the contamination of the public water supplies.

ATTACHMENT NO. 3

ORDER

MORATORIUM

ELK-PINCH PUBLIC SERVICE DISTRICT
Kanawha County

A review of data, field investigations and other information furnished this office indicates that a potential health hazard exists within the Elk-Pinch Public Service District.

The potential health hazard exists in several forms, as follows:

A. A minimum of 50% of all septic tank soil absorption systems are failing or overflowing.

B. Presence of sewage and septic tank effluent in ditches and pooling on the ground presents major mosquito breeding areas.

C. Raw sewage is being discharged to Elk River in the Pinch, Elk Forest, Durham Heights and Creed areas. These areas are upstream of the West Virginia Water Company and Pinch Water Company intakes.

D. Coliform counts in the Elk River are in excess of those allowable for surface raw water sources.

Therefore, by virtue of the powers vested in the office of the State Director of Health, and in accordance with Chapter 16, Article 1 of the West Virginia State Code, a moratorium is herewith ORDERED:

1. Suspending the installation of all individual on-site sewage disposal systems within the boundaries of the Elk-Pinch Public Service District.

2. Suspending new service connections to the West Virginia Water Company and Pinch Water Company systems within the boundaries of the Elk-Pinch Public Service District.

3. Prohibiting any additional connections to existing community sewer systems utilizing septic tanks and to existing community collection systems without treatment.

Thus, all residences, mobile homes, apartments, establishments and all other structures which may generate sewage and which are under construction or are to be constructed within the moratorium area after the date of establishment of this moratorium shall not be occupied or connected to the West Virginia Water Company system or Pinch Water Company system unless:

a. An approved sewage collection and treatment system owned and operated by the Elk-Pinch Public Service District is available and is operating.

b. A community sewage collection and treatment system approved by the State Health Department is available and is operating in compliance with all state laws and regulations.

c. An exception to the moratorium which may be granted in conformance with instructions issued by the State Health Department, attached to this order.

April 11, 1984

L. Clark Hansbarger, M.D.
Director of Health

Date

STATE OF WEST VIRGINIA
COUNTY OF KANAWHA, to-wit:

The foregoing instrument was acknowledged before me this the 11th day of April, 1984, by THE WEST VIRGINIA DEPARTMENT OF HEALTH, by L. Clark Hansbarger, M.D., its Director, and writing to be the act and deed of The West Virginia Department of Health.

Diana M. Castillo
NOTARY PUBLIC

My Commission Expires:

9/15/91

PROCEDURE
FOR OBTAINING AN EXCEPTION TO THE MORATORIUM
ELK-PINCH PUBLIC SERVICE DISTRICT
KANAWHA COUNTY

Requests for exceptions to the moratorium must be made, in writing, by the property owner or his legally authorized representative. Such requests shall be made to the State Department of Health through the Kanawha-Charleston Health Department, 103 Lee Street, East, Charleston, WV, 25323.

Evidence supporting such requests shall consist of, but not be limited to:

1. Documentation that construction was begun on a residence or establishment on or before the date of the moratorium.

2. Construction shall be defined as completion of the footer on or before the date of the moratorium.

3. Documentation that financing the construction of the residence or establishment to completion has been established.

4. Documentation that a sewage system can be installed, which system will in the opinion of the department, not cause further potential health hazards.

April 11, 1984
Date

I, MARGARET D. MILLER, do hereby certify that this is a true copy from the original
Teste: MARGARET D. MILLER, Clerk
Kanawha County Commission
Date 4-12-84 By
Clerk

ATTACHMENT NO. 4

OFFICE OF THE KANAWHA COUNTY COMMISSION

F. Douglas Stump, President
Robert F. Silverstein - Henry C. Shores

Post Office Box 3226
Charleston, West Virginia 25332
Telephone (304) 34[illegible] 0750

May 10, 1984

Mr. Bernard W. Whittington, Chairman
Sissonville Public Service District
6438 Sissonville Drive
Sissonville, West Virginia 25320

Re: Letter of Intent

Dear Mr. Whittington:

This letter is to inform you of the action taken this date by the Kanawha County Commission in appropriating Two Hundred Fifty Thousand Dollars ($250,000.00) out of fiscal year 1984-85 Revenue Sharing Funds to the Sissonville Public Service District for the construction of a sewer project. The Kanawha County Commission also intends to appropriate Two Hundred Forty Nine Thousand Dollars ($249,000.00) out of fiscal year 1985-86 Revenue Sharing Funds to the Sissonville PSD sewer project, if these funds are available in fiscal year 1985-86.

Before the Two Hundred Fifty Thousand Dollars ($250,000.00) in fiscal year 1984-85 is obligated to the Sissonville PSD sewer project, the following objectives must be completed:

1. A complete financial analysis of the sewer project must be documented. This financial analysis must include, as a minimum, all the requirements of Rule 42 (PSC) and Federal Law 40 CFR 30.340-2(d).
2. Public hearings for the citizen's input must be conducted after financial data is completed.
3. Complete list of all customers, including names and or addresses.
4. Collection of a minimum of five hundred (500) tap fees.
5. Provide documentation and certification that Federal Law 40 CFR 35.935-3(B)(3), "Title to Sites, Rights of Ways and Easements are obtained prior to construction," have been completed.

6. Comply with all State and Federal Nondiscrimination Laws and all provisions of the Federal Davis/Bacon Act.

7. You are required to meet all the requirements of the Kanawha County Purchasing Department relating to the purchase of materials or contracting of services.

The Kanawha County Commission is happy to be of assistance to the Sissonville Public Service District in providing sewer services to the residents of this area of Kanawha County.

Sincerely yours,

COUNTY COMMISSION OF KANAWHA COUNTY

F. Douglas Stump
F. Douglas Stump, President

Robert F. Silverstein
Robert F. Silverstein, Commissioner

Henry C. Shores, Commissioner

/paw

SISSONVILLE PUBLIC SERVICE DISTRICT

6438 SISSONVILLE DRIVE • SISSONVILLE, WEST VIRGINIA 25320 • TELEPHONE 304/984-3821

BOARD OF COMMISSIONERS
BERNARD W. WHITTINGTON
LEMUEL A. WHITTINGTON
THOMAS R. WILKINSON

GENERAL MANAGER
THOMAS R. JOHNSON

RECEIVED
5 07
KANAWHA COUNTY COURT

April 30, 1984

Ms. Susan Harman
Manager
Kanawha County Commission
P.O. Box 3226
Charleston, WV 25332

Subject: Need For Formal Letter of Commitment
Kanawha County Grant For
Sissonville Sewage Treatment System

Dear Ms. Harman:

This letter confirms several previous verbal requests for a letter of commitment from the County regarding the $499,000.00 grant for sewage treatment facilities for the Sissonville Public Service District. It is my understanding there are attached qualifications to implementation of the grant and we need to know these so that we may make timely plans for compliance.

Please include in your letter of commitment the $251,000.00 that was granted Sissonville by the Small Cities Block Grant Program.

Additionally, the Regional Office of EPA states they must have this letter for their files. They have temporarily accepted newspaper clippings regarding the grant from your office, but require the formal response.

Thank you for your cooperation.

Sincerely,

Bernard W. Whittington

Bernard W. Whittington
Chairman
BOARD OF COMMISSIONERS
SISSONVILLE PUBLIC SERVICE DIST.

BWW/mc

cc: John N. Charnock, Jr.
Bernard Clark
Gary Cochran
Harry Moore
Henry C. Shores
Robert F. Silverstein
F. Douglas Stump
William M. Watkins, III
Bill Westmoreland

OFFICE OF THE KANAWHA COUNTY COMMISSION

F. Douglas Stump, President
Robert F. Silverstein - Henry C. Shores

Post Office Box 3226
Charleston, West Virginia 25332
Telephone (304) 348-0750

MEMORANDUM

TO: Honorable F. Douglas Stump

FROM: Bernard H. Clark

SUBJECT: ELK-PINCH PSD - FINANCES

DATE: May 21, 1984

The Note issued dated March 15, 1982 and the Engineer's Estimate showed a cost estimate for the total Elk-Pinch Project amounting to $22,398,221.00. The EPA grant amount based on this total project cost would be $14,343,205; also included in this amount was the construction cost estimate of $17,872,632; contingency $769,755; and Tech Services of $1,450,400.

Current project cost as estimated by the consulting engineer dated April 9, 1984 showed the total project cost as $23,930,200. This total project cost figure does not include the cost savings to EPA and the general public generated by the intervenors who saved over $600,000 on the waste treatment plant. This $600,000 savings was not realized however; since the engineering fees are projected to be $750,000 over the Public Service Commission Rule 42 numbers and the Legal/Administrative/Cost of issuance and land easements are also over the original budget.

What the intervenors saved has long since been exhausted.

OFFICE OF THE KANAWHA COUNTY COMMISSION

F. Douglas Stump, President
Robert F. Silverstein - Henry C. Shores

Post Office Box 3226
Charleston, West Virginia 25332
Telephone (304) 348-0750

TO: Hon. F. Douglas Stump, President

FROM: Bernard H. Clark

SUBJECT: ELK-PINCH PSD - FINANCES

DATE: May 21, 1984

The following cost summary of estimates are based on a letter from EPA dated September 8, 1982 signed by Mr. Kenneth R. Kryszczum, Chief, and from the Note Prospectus dated March 15, 1982. The Note Resolution states, "The EPA Grant Agreement established $16,390,050 as a grant offer constituting the max amount of money available to pay reimbursements to the District for project expenditures. This amount was predicated on estimated project costs of $25,116,979. Present cost estimates aggregate $22,398,331, based on which the anticipated EPA Grant will be $14,343,285."

ITEM	EPA LETTER OF 9/8/82 FOR GRANT PARTICIPATION	CURRENT COST PROJECTIONS FOR GRANT PARTICIPATION
A) Construction:		
1) Contract 1-11	$12,632,899.35*	$12,632,899.35*
2) Constrct 12	3,075,000.00	2,414,000.00
3) Equipment	28,539.00	86,723.00
B) Technical Services	1,398,343.77	1,398,343.77
C) Legal & Fiscal	0.00	0.00
D) Administrative	87,986.00	87,986.00
E) Contingency	939,131.88	873,044.00
TOTAL:	$18,161,900.00	$17,492,996.12
EPA @ 75%	13,621,425.00	13,119,747.00
ARC		400,000.00
GRANT TOTAL:	$13,621,425.00	$13,519,747.00

*Cost will probably increase because of change orders.

The $13,519,747 should be a reasonable estimate for EPA participation since the figures are reflective of actual contract agreements. The only areas that may be eligible for additional money is line items involving legal-fiscal, administrative, change orders for construction and additional technical services.

Mr. LEVITAS. Mr. Blair, I think it might be helpful at this point if you let us hear from you on the subject and then we will open it for questions to the entire panel.

Mr. BLAIR. Yes; thank you very much, Mr. Chairman, members of the subcommittee. It is indeed an honor and a privilege for me to have the opportunity to present my views to you.

I am Tom Blair, president of Kelley, Gidley, Blair & Wolfe, Inc. Accompanying me today is Jim Downey, who is vice president of our firm.

We have prepared a written statement which I request be included in the record.

Mr. LEVITAS. Without objection, your entire statement will be made part of the record.

Mr. BLAIR. I would also request that if additional information is required in a written form and/or you agree that we may submit it that that be included in the record also, sir.

Mr. LEVITAS. The Chair has announced that the record will be kept open for 2 weeks for the submission of additional material from interested parties and answers to questions that the panel puts to the witnesses.

Mr. BLAIR. Thank you very much.

With respect to the Elk Pinch project, Kelley, Gidley, Blair & Wolfe, Inc., the engineer of record for the Elk Pinch Public Service District's wastewater facilities project, complied with all existing rules and regulations of EPA and the State department of natural resources in the planning and design of this much needed and worthwhile project.

The project was designed using the most cost-effective solution to abate pollution which in turn equated to low sewer service charges. The details are in our written testimony.

In evaluating the affordability of the Elk Pinch project, we completed the step one and step two requirements, including revisions which occurred during the normal review and approval process by DNR and EPA. In West Virginia, public service districts receive approval of their financial plan as well as proposed rates from the State public service commission. The original application submitted by the Elk Pinch Public Service District requested a proposed sewer service charge rate of $5.25 per thousand gallons of water usage.

The public service district commissioners felt that this was affordable considering the need to alleviate existing public health hazards as well as abate pollution. So, PSD residents intervened in the public service commission hearings and stated that the project was too costly in view of the proposed sewer service charges. The investment banking firms of Baker, Watts & Co., and E.F. Hutton & Co., recommended that the sewer service charges could be lowered utilizing the arbitrage benefits of a construction note issue. This idea was accepted by the district commission.

Rates were approved at $4.26 per thousand gallons of water usage. As a result of these lowered sewer service charges, the project was accepted as affordable by the majority of the Elk Pinch public service district.

It is important to recognize that over 55 miles of sewers and force mains are being constructed under this project.

Following a recommendation from the intervenors, the wastewater treatment plant was redesigned and submitted to public bid to determine whether the original plant designed by our firm was actually the most cost-effective one. A comparison of the two plants on a prevalue basis showed a differential of approximately $1,300. The supposedly less costly alternative plant design was selected. The truth of the matter is that even though, by a very slim margin, the alternative plant appears to be the most cost effective, the additional maintenance as well as power costs will result in district users paying far more.

The scope was reduced somewhat to eliminate areas that were found to be economically unfeasible. Other changes in the scope of the project were dictated by the Department of Highways, changing their specifications before the project was constructed. Due to the intervention by district residents, the project was delayed longer than we expected.

In developing project cost information, we, Blair & Wolfe, Inc., determined the estimated total construction dollars, the estimated contingency, and estimated technical fees for the project used in the public service commission rule 42 exhibit. Other information in this exhibit include anticipated revenues as well as expenditures, and these numbers were projected by others.

The public service commission ordered the public service district to employ a project administrator. This, in my opinion, even though it increased the project cost, was in the best interest of the project and the people. The administrator reviewed and approved all proposed project changes, including line relocations to satisfy right-of-way demands and administered the day-to-day business of the public service district.

Cost overruns, which essentially doubled, estimated legal fees and dollars set aside for property and right-of-way and acquisitions occurred as a result of resistance to the project.

You can well imagine how much the condemnations increased legal fees for condemnation suits. It is indeed a shame that the people didn't understand that their resistance to the project merely placed additional burden upon them in dollar terms. Land and land rights are not eligible for EPA participation, and therefore these costs and related legal fees must be paid solely from local share dollars.

There is no question that there is a financial dilemma in the Elk Pinch Public Service District project. There are no problems with the engineering design of the project, but there are some punch list items which the contractors must correct. Such things are normal in any project. The project is approximately 90 percent complete. The shutdown occurred on December 21, 1983, because no proposal was available at that time to fully fund the project.

As a matter of fact, it was not until early December 1983 that all of the professionals—and when I say professionals, I mean the bond council, the investment bankers, the accountants, the lawyers, as well as the consulting engineers who had been involved in the project—could agree that the Elk Pinch Public Service District was facing a financial dilemma. Once this was determined, the shortfall actually facing the public service district had to be quantified.

In January 1984, the accountants, furnishing monthly budget figures to the district since the beginning of construction, indicated a shortfall of approximately $1,358,000. Further review of these numbers indicated the shortfall would be $1,300,000. This information is in a report which was prepared by my consulting engineering firm which I mailed to Mr. Prolman, which I would appreciate it, if it hasn't been, could be disseminated to members of the committee. That is the April 9 report which outlines in detail all of the numbers relating to the project as it exists today.

At the request of Miles Dean of the Governor's Office of Economic and Community Development, I met with G. Thomas Yeager III, of Baker, Watts & Co. to work out a funding solution that would not place undue hardship upon the people. Mr. Yeager, working with E.F. Hutton & Co., developed a proposed plan which would eliminate any increase in sewer service charges as a result of construction and would require only a nominal increase in sewer service charges after the plant goes into operation.

The increased sewer service charges would be higher than proposed operation and maintenance expenses due in part to the choice of the alternate wastewater treatment plant.

During the April 10 meeting, I thought the participants, including two district commissioners, agreed in principle that a plan would be adopted by the district commissioners to allow issuance of the subordinate series B bonds proposed by Baker, Watts and E.F. Hutton and receipt of a $300,000 grant from the water development authority resulting in a nominal sewer service charge increase of 13 cents per 1,000 gallons. Unfortunately, following adjournment of this meeting, at least two of the district commissioners decided not to accept the proposed funding solution.

Their next step was to announce that they would move forward with the completion of the project under a deficit and obtain the additional monies of $1.3 million from lawsuits against the so-called nonviolators.

Since the public service district commissioners have sued Kelley, Gidley, Blair & Wolfe, Inc., and Baker, Watts & Co. for $60 million, I would presume that these district commissioners consider at least some of those parties to be in the category of nonviolators.

Obviously, the discussion of that suit would be improper at this time as Congressman Wise, being an attorney, could fully understand.

To the best of my knowledge and belief, we have performed our services on this project in a professional manner not unlike the services we have furnished on many other EPA and public works projects in West Virginia.

Our firm has been engaged in engineering activities in West Virginia for over 30 years. As I stated, the problem is neither one of engineering design nor one of construction.

It is a financial dilemma. It results from the shortfall of $1,300,000 required to pay off the construction notice issue which becomes due on September 15, 1984.

The project can be completed, should be completed, and when completed will not result in sewer service charges in excess of those charged elsewhere in the State of West Virginia.

Our written testimony contains detailed information verifying that statement.

The project is much needed, not only from a public health viewpoint, but also from a pollution abatement viewpoint. The Elk Pinch Public Service District is less than 3 miles above the water intake serving our capital city in Kanawha County.

Over 200,000 people are affected by the untreated waste water currently being discharged into Elk River. I am afraid there has been a tendency in this project to overlook the fact that the bottom line is pollution abatement.

That is what it is all about; it is pollution abatement. It is protection of public health and the protection of our environment.

I believe in pollution abatement. I believe in the protection of our public health and I believe in the protection of our environment and I believe in the much needed and worthwhile Elk Pinch Public Service District project.

Thank you very much for the opportunity to discuss this project with you today. I will be more than happy to answer any questions that you might have in connection with this project or the Malden project.

Thank you again.

[The statement of Mr. Blair follows:]

KELLEY, GIDLEY, BLAIR & WOLFE, INC.
CONSULTING ENGINEERS
550 EAGAN STREET
CHARLESTON, WEST VIRGINIA 25301
(304) 345-0470

May 23, 1984

The Honorable Elliott H. Levitas, Chairman
Subcommittee on Investigations and Oversight
Committee on Public Works and Transportation
U.S. House of Representatives
Room 2165
Rayburn House Office Building
Washington, D.C. 20515

Re: Elk-Pinch Public Service District
Sewage Project
Kanawha County, West Virginia
EPA I.D. No. C-540388-03

Dear Mr. Levitas:

It is our pleasure to respond to your request that we appear before the Subcommittee to assist you with your important review of this project. As you know, our firm has been involved in the planning, design, and construction of this project for over ten (10) years. We are very perplexed at the problems that have recently plagued this project.

We wish to address the questions contained in your May 17, 1984 letter, in writing, followed by a brief background of the project containing several facts that may be of interest to the Subcommittee. We also ask that you review and distribute the items previously mailed to you which included the many newspaper clippings covering the project, our April 9, 1984 report regarding project cost information, a copy of the Public Service Commission order, and a proposed solution to funding the project deficit.

Our response to your questions is as follows:

1. "— the steps taken, and factors considered by you or your firm in determining the most technologically appropriate, and most cost-effective treatment system."

During the years of 1974 and 1975, our firm conducted a "201" Facility Planning Study in accordance with EPA regulations to determine the most cost-effective means of alleviating the wastewater problems of the district. Among the many alternatives studied were: 1) upgrading existing septic tank systems; 2) septic tank mound systems; 3) cluster conventional sewer systems with treatment by package wastewater treatment plants; 4) conventional gravity sewer system with treatment at the existing City of Charleston wastewater treatment plant; and 5) conventional gravity sewer system with construction of a new wastewater treatment plant to serve the district.

During the course of the study, officials from the Elk-Pinch PSD as well as Kelley, Gidley, Blair & Wolfe, Inc. met with the Charleston Sanitary Board to discuss the feasibility of connecting a sewer system to the Charleston system for transportation and treatment. This alternative was considered the most desirable, since a regional solution could be realized, and it appeared to be the most cost-effective. Site restrictions precluded alternatives using septic tanks. Cluster systems utilizing package advanced wastewater treatment plants were not cost-effective. In addition, the West Virginia Department of Health required that a regional treatment plant to serve Elk-Pinch PSD would necessitate advanced treatment if discharge would be immediately upstream of the Charleston water intake.

During initial contacts with the City of Charleston, the Sanitary Board stated that it was willing to accept the flow from the district. The rate was to be the same for customers outside the city boundaries, treating the district as one customer.

Using this information, a cost-effective analysis was conducted comparing the cost of connecting to the City of Charleston system versus the other alternatives. The results of this evaluation showed that connection to the Charleston Sanitary Board was the most cost-effective. However, no costs for upgrading the Charleston system were included in this evaluation since the City of Charleston had stated that it was capable of handling the flow.

At the conclusion of the Facility Planning Study in December 1975, Elk-Pinch PSD requested that Charleston enter into a preliminary agreement for service so that it could complete its facilities planning requirements and submit its report to the state and EPA for approval.

In response to this request, the Charleston Sanitary Board's engineer informed the Elk-Pinch PSD that the Charleston Sanitary Board was willing to transport and treat domestic wastewater from the proposed the Elk-Pinch PSD collection system subject to determination that the Charleston treatment system had adequate capacity to handle the flow. The letter noted that this determination could only be made through an infiltration/inflow analysis that had not yet begun.

This statement by the Charleston Sanitary Board's engineer put the project in limbo, for it was impossible to proceed until the City of Charleston could inform Elk-Pinch PSD whether or not it could handle the flow and, if not, how much it would cost Elk-Pinch PSD to upgrade the Charleston system so that the connection could be made. In the interim, as a second response to Elk-Pinch PSD's original request, Charleston's engineer sent the Elk-Pinch PSD a letter outlining the cost of treatment services.

On April 15, 1976 Kelley, Gidley, Blair & Wolfe, Inc. requested information from the Charleston Sanitary Board regarding flows at the Charleston treatment plant in an effort to expedite the finalization of planning. The Charleston Sanitary Board again responded through its engineer and informed Kelley, Gidley, Blair & Wolfe that the Charleston treatment plant had exceeded its capacity even under dry weather conditions and could not handle the Elk-Pinch PSD flow without system rehabilitation and expansion.

Late in 1977 the Charleston Sanitary Board finally gave the Elk-Pinch PSD a general cost estimate for upgrading the Charleton system; however, this "upgrading" of the Charleston system would still discharge the Elk-Pinch flow into the Elk River directly above the Charleston (West Virginia Water Company) water intake during storm periods because the Charleston system is a combined storm sewer/sanitary system.

Using the information provided by the Charleston Sanitary Board's engineer, the Elk-Pinch PSD reevaluated the alternatives and determined that it was more cost-effective to construct its own wastewater treatment plant than to connect to the City of Charleston. Elk-Pinch PSD also discovered that, in the interim, its project cost estimate had increased over 25% due to delays created by waiting for Charleston's input.

In evaluating the type of treatment process to be used, several alternatives were evaluated:

1. Oxidation ditch;
2. Package-type activated sludge treatment system;
3. Rotating biological contactors.

The evaluation showed that an oxidation ditch would be the most cost-effective process; however, sufficient land was not available for this process. Therefore, the next most cost-effective process was selected which was the rotating biological contactors.

Elk-Pinch PSD then submitted its final report to DNR and EPA for review and approval, and a Step II grant was awarded for the design.

During the Public Service Commission hearings in February 1981, the PSC ordered the district to design a complete new plant to be bid as an alternative to the plant that had already been designed. This was ordered by the PSC to satisfy complaints by the protesters. The new plant design ordered by the PSC was more cost-effective than the original plant by only $1,300. However, the effects of major power usage in the future make the original plant more desirable and will have less impact on rate increases than the plant being constructed.

2. "— the steps taken, and factors considered by you or your firm to determine the affordability of the Elk-Pinch project, including any indexes or criteria you relied on in making such determinations."

In determining whether a proposed system is affordable or not, Kelley, Gidley, Blair & Wolfe, Inc. relies on at least three major factors:

a. A comparison of the approved rates for new sewer systems in the immediate area (See copy of area rates - Attachment A);

b. The use of the West Virginia Water Development Authority guideline of $19.75 per month for the average customer; and,

c. Public acceptance of the resulting rate.

In the case of the Elk-Pinch project, it was felt by the firm that a rate of $5.25 per 1000 gallons was excessive; however, the district commissioners decided that the rate should be pursued. Thus, the request for rates was submitted to the public service commission.

Baker, Watts & Co., investment bankers, made a financial proposal to the district that allowed the rate to be reduced to $4.26 per 1000 gallons. This rate met our first two criteria, above, and apparently met the third criteria also since the West Virginia Public Service Commission approved the rate over the protests of the intervenors.

3. "— your, or your firm's involvement and responsibilities for determining and controlling the project costs including your role and responsibilities for recommending and/or approving any changes in the nature of the project scope, design, etc."

Kelley, Gidley, Blair & Wolfe, Inc. was involved and is responsible for the project construction costs only. At the beginning of construction the district hired a project coordinator to coordinate the services of all of the professionals involved in the project and to financially manage the project. Thus, the district, through its project coordinator, was responsible for all costs of the project. Our firm simply reported the construction status and construction costs at each monthly meeting as per the terms of our contract.

All changes on the project, whether requested by the contractor, directed by the district, requested by the right-of-way agent, or recommended by our firm, were first fully evaluated by our firm and then given to the project coordinator for his review and approval. Our evaluation included a financial analysis to determine whether the project cost would increase or decrease as a result of the change. This information, along with a sketch of the change was given to the project coordinator for his review and approval. Upon his approval, the project coordinator would stamp the change approved and then initial the drawing as official action of the district. No changes were made unless directed by the project coordinator or the district commissioners.

Change orders were negotiated directly between the project coordinator, the contractor and the engineer. No change orders were executed without the recommendation of the project coordinator and signed by the district chairman.

4. "— your, or your firm's involvement and responsibilities in the development and management of the plan for financing the construction of the project."

Our firm's involvement in the development of the financing plan for the district has only been to provide construction and engineering fee estimates, and to provide estimated project expenditures and receipt of grant payments on a monthly basis during construction. Our firm also prepared the grant applications for EPA, Kanawha County Commission, Water Development Authority, and Appalachian Regional Commission funds.

Our involvement in the financial plan during construction has been limited to preparing the EPA outlay for reimbursement of eligible expenditures, determining whether expenditures were eligible or ineligible for reimbursement by EPA, and calculating the amount of funds necessary to be transferred from the grant receipts account to the eligible cost account for payment of eligible expenditures. In addition, we have performed calculations monthly as prescribed by bond counsel to assure the district maintained sufficient funds to repay the construction notes.

5. "— the steps being taken by you or your firm, if any, to address the financial problems that have led to the halting of construction of the project."

We have met many times between October 1983 and this date with officials at all levels to discuss the possible causes of the financial problems. We have also been purposely excluded from many of these meetings in which we possibly could have had major input.

As a result of our countless meetings and continuous efforts, we presented a report to the district on April 9, 1984, which set forth our opinion of the estimated deficit for the project. This report has already been submitted to you for your review. Baker, Watts & Co. has made a proposal to the district on funding of the deficit at no increase in rates and no issuance costs to the district. The attached letter explains the proposal. (See attachment B)

To date the district has rejected this proposal.

Other Facts

Protests

In November 1980 Elk-Pinch PSD received bids on its twelve construction contracts. The total bids for the contracts amounted to $17,872,632. Immediately a request for a rate hearing was requested of the West Virginia Public Service Commission to establish a rate of $5.25 per 1000 gallons.

Elk-Pinch PSD was scheduled to appear before the public service commission on February 19, 1981 for the rate case hearing. However, on that date the hearing room was inundated by approximately 200 protesters which prohibited the hearing from continuing. An order was given by the hearing examiner to reschedule the hearing for February 23, 1981, at Herbert Hoover High School (located in the district area) to accommodate the large crowd.

In the meantime, the Elk-Pinch PSD Commissioners were approached by the investment banking firm of Baker, Watts & Co. who had made a proposal to the district for a new concept in construction note financing called BANs (bond anticipation notes) and GANs (grant anticipation notes). With this new financial information in hand, the district requested that the hearing be postponed to give them time to evaluate the proposal. The extension was granted; however, the February 23 meeting was held to allow the protesters the opportunity to voice their opposition to the project.

The financing proposal of Baker, Watts & Co. was evaluated by the district. The plan would allow the district to earn sufficient funds to reduce the rates to $4.26 per 1000 gallons and possibly have funds remaining.

This plan was submitted to the public service commission who, after additional hearings and testimony, approved the new rate of $4.26 per 1000 gallons.

Several major items were included in the public service commission order that have effected the project. These were:

a. The protesters had complained that since the district commissioners worked, there was no one that the public could contact with complaints or questions. Therefore, the PSC required the district to hire a project coordinator.

b. The protesters complained that the district had no office located in the district area where problems could be discussed and that the district was holding their meetings at the engineer's office. The PSC ordered that the district open an office in the district area, manned full-time, with telephone service in an effort to assist the public.

c. The protesters complained that the rotating biological contactor plant and that a package plant shold be constructed. The PSC ordered that in order to satisfy the protesters that a package plant be designed and rebid head-to-head with the rotating biological contactor plant.

All of the above was done by the PSC without taking into consideration the effects on the rates. Nonetheless, the above orders were complied with by the district. The new plant requested by the intervenors was more cost-effective by only $1,300. However, the effects of major power usage in the future make the original plant more desirable. Although this was the case, the district was forced to construct the package plant.

Project Financing

The financing plan for the project was handled by Baker, Watts & Co. of Baltimore, Maryland. The plan was to sell the combined issue of BANs and GANs as a total construction note issue of $12,800,000. These notes were to be sold at 9.25% interest and invested at 13.93% interest. The interest earnings would exceed the interest payments and would therefore allow the reduction in the sewer rate as well as have funds remaining at the end of construction. The notes would be repaid after thirty months by the grant proceeds and the long-term bond issue through the Water Development Authority.

In March 1982 the construction note issue was sold, construction contracts were awarded in April 1982 and construction began in May 1982.

As part of the monitoring process to assure that the district maintained sufficient funds in the bank to repay the notes, it was necessary for the district to work through a formula showing that the $12,800,000 could be paid. In October 1983 the conditions of the formula could no longer be met, and the project went into technical default. Subsequently, the district commissioners issued a cease work order on December 21, 1983.

Reasons For Default

Several factors contribute to the current estimated $1.3 million deficit facing the district and they are as follows:

1. Overruns in estimated right-of-way costs;
2. Overruns in legal costs;
3. Overruns in estimated engineering costs;
4. Compliance with the PSC orders; and
5. Misstatement of the interest that must be paid to the construction note holders.

The major item above is the misstatment of the interest to be paid to the construction note holders.

The capitalized interest amount presented to the PSC after the acceptance of the Baker, Watts & Co. proposal was $1,233,170. It was discovered in October 1983 that this amount should have been $2,960,000. Thus the capitalized interest amount had been misstated by $1,726,830. To date there is much controversy regarding who is at fault for this error. The resolution of this matter will undoubtedly only be decided by the courts.

The April 9, 1984 Elk-Pinch Public Service District Project Cost Information submitted to the committee outlines the current standings of each cost item, reasons for the cost overruns, and an estimate of the project deficit. The current estimated project deficit is $1,300,000.

We hope that the Subcommittee finds this information useful in their review. We will be happy to supply additional information if requested.

Sincerely,

KELLEY, [illegible], BLAIR & WOLFE, INC.

Thomas J. Blair, III, P.E.
President

TJB/sa

Attachments

ATTACHMENT A

EXAMPLES - SEWER BILLS - DISTRICT

(Approved - PSC)

	Webster Springs	Chelyan	Malden	Teays Valley	Green Valley	Elk-Pinch	Shady Spring	Kingmill Valley
Year Order Issued	1977	1977	1983	1979	1980	1981	1982	1983
Minimum 1,500 Gal.	—	—	—	—	—	6.40	—	—
Minimum 2,000 Gal.	8.60	8.50	10.60	7.90	9.90	8.52	10.76	6.86
3,000 Gal.	12.35	12.50	15.35	11.85	14.40	12.78	16.14	10.29
4,000 Gal.	16.10	15.50	20.10	15.80	18.90	17.04	21.52	13.72
5,000 Gal.	19.85	18.50	24.85	19.75	23.40	21.30	26.90	17.15
6,000 Gal.	22.30	21.50	29.05	23.70	27.65	25.56	32.28	20.58
7,000 Gal.	24.75	24.50	33.25	27.65	31.90	29.82	37.66	24.01
8,000 Gal.	27.20	27.50	37.45	31.60	36.15	34.08	43.04	27.44
9,000 Gal.	29.65	30.50	41.65	35.55	40.40	38.34	48.42	30.87
10,000 Gal.	32.10	33.50	45.85	39.50	44.65	42.60	53.80	34.30
Bond Interest Rate	5%	5%	7.25%	5%	10%	10%	10%	10%
Coverage	110%	110%	130 %	110%	130%	130%	130%	130%
Sewer Users Expected	743	555	3,500	1,200	773	2,822	1,698	886

KELLEY, GIDLEY, BLAIR & WOLFE, INC.
CONSULTING ENGINEERS
550 EAGAN STREET
CHARLESTON, WEST VIRGINIA 25301
(304) 345-0470

May 23, 1984

The Honorable Elliott H. Levitas, Chairman
Subcommittee on Investigations and Oversight
Committee on Public Works and Transportation
U.S. House of Representatives
Room 2165
Rayburn House Office Building
Washington, D.C. 20515

Re: Malden Public Service District
Sewage Project
Kanawha County, West Virginia

Dear Mr. Levitas:

We are happy to respond to your inquiry regarding our involvement in the Malden Public Service District Sewer Project. Kelley, Gidley, Blair & Wolfe, Inc. is not the engineer of record for that project; therefore, the information that we have to offer is very limited. Our involvement has been limited to the Water Development Authority (WDA) peer review and a courtesy report for WDA outlining our professional opinion of the causes of the inability of the treatment plant to meet discharge permit requirements. A copy of both our peer review certification and report are attached for your use.

Our peer review of the project was limited to a review to ensure that all governmental agency reviews, permits and approvals had been received, that the construction and operation and maintenance costs appeared reasonable, and that the plans and specifications were consistent with the engineering statement. The peer review does not include a technical review of the plans and specifications as this review is conducted by state and federal agencies.

The report that we submitted to WDA was prepared at their request. We were asked to identify the causes, in our opinion, for the treatment plant's inability to achieve the effluent requirements set forth in the NPDES permit. The report also proposes modifications to the plant and presents the estimated cost of the modifications.

We hope you find the attached information useful in your review of this project.

Sincerely,

KELLEY, GIDLEY, BLAIR & WOLFE, INC.

Thomas J. Blair III
President

TJB/sa

Attachments

KELLEY, GIDLEY, BLAIR & WOLFE, INC.
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H. R. CHAPMAN, P. E.

CONSULTANTS
W. D. Kelley, P. E.
W. S. Staub, P. E.
B. S. Salmp, P. E.

ENGINEER'S CERTIFICATE AS TO ENGINEERING STATEMENT

We hereby certify as follows:

1. A complete text of the Engineering Statement prepared by VTN, Inc., and attached to the application dated April 4, 1978, as revised and supplemented, submitted to the West Virginia Water Development Authority (the "Authority") by the Malden Public Service District, a Governmental Agency, with respect to the financing of a water development project (the "Project") with a portion of the proceeds of not in excess of $8,200,000 in aggregate principal amount of the Authority's Water Development Revenue Bonds (Sewage Systems Loan Program), 1978 Series A, has been examined by us.

2. We are of the opinion that such Engineering Statement is reasonable and adequate, that the drawings and specifications accompanying the Engineering Statement are consistent with said statement and that the estimates of construction cost of the Project, the projections of revenues and the projections of operation and maintenance expenses for the first five years of operation of the Project as contained in said statement are reasonable. No opinion is expressed as to the reasonableness of non-operating and non-maintenance expenses.

IN WITNESS WHEREOF, I have hereunto set my hand this 29th day of November, 1978.

T. J. Blair III

T. J. Blair III
Kelley, Gidley, Blair & Wolfe, Inc.

KELLEY, GIDLEY, BLAIR & WOLFE, INC.
CONSULTING ENGINEERS
550 EAGAN STREET
CHARLESTON, WEST VIRGINIA 25301
(304) 345-0470

March 14, 1983

Mr. Edgar N. Henry
Water Development Authority
1201 Dunbar Avenue
Dunbar, W. Va. 25064

Re: Malden Public Service District
Kanawha County, West Virginia
Investigation of Treatment Plant
Effluent Quality

Dear Mr. Henry:

Transmitted herewith is our report detailing the findings of our investigation of the effluent quality of the Malden Public Service District's wastewater treatment plant.

The purpose of this report is to identify the major causes of the inability of the treatment facility to meet discharge permit requirements and also to identify recommended improvements which should allow it to meet acceptable effluent requirements. This report identifies the problems, the probable causes, and the estimated cost of corrections.

It is not the intent of this report to recommend final solutions to correct the deficiencies. This would require more extensive engineering design considerations than those appearing in this report.

After you have had a chance to review our report, please let me know and I will be more than happy to meet with you to discuss our findings and answer any questions you might have in this regard.

Sincerely,

KELLEY, GIDLEY, BLAIR & WOLFE, INC.

T. J. Blair

TJB:sa
Enclosure

MALDEN PUBLIC SERVICE DISTRICT
KANAWHA COUNTY, WEST VIRGINIA

INVESTIGATION OF TREATMENT PLANT EFFLUENT QUALITY

March 1983

KELLEY, GIDLEY, BLAIR & WOLFE, INC.
Consulting Engineers
Charleston, West Virginia

MALDEN PUBLIC SERVICE DISTRICT
KANAWHA COUNTY, WEST VIRGINIA

INVESTIGATION OF TREATMENT PLANT EFFLUENT QUALITY

March 1983

TABLE OF CONTENTS

Page

1. Summary and Conclusions 1
2. Report Purpose and Scope 3
3. Introduction 4
4. Major Problems and Deficiencies 4
    a. Inflow Overload 5
    b. Foaming From Aerobic Digester 5
    c. Operator Training/Preventive Maintenance 6
    d. Suspended Solids Effluent Violations 7
    e. Start Up After Power Outages 9
    f. Sludge Handling 9

MALDEN PUBLIC SERVICE DISTRICT
KANAWHA COUNTY, WEST VIRGINIA

INVESTIGATION OF TREATMENT PLANT EFFLUENT QUALITY

March 1983

1. SUMMARY AND CONCLUSIONS

The Malden Public Service District wastewater treatment facility is a 1.5 MGD pure oxygen ("UNOX") system constructed and placed into operation in 1980. Currently the wastewater flows at the facility range from 0.3 to 0.6 MGD depending upon weather conditions. Due to these relatively low flows, approximately one-half of the treatment system is in operation.

The treatment facility has consistently failed to meet its effluent permit requirements since start up was initiated. In early 1982, the U.S. Environmental Protection Agency (EPA) retained a consultant, JRB Associates, to investigate the problems at the facility and to file an inspection report. In late 1982, the West Virginia Water Development Authority (WDA) requested that the peer review engineer, Kelley, Gidley, Blair & Wolfe, Inc., conduct a similar investigation. This report of that investigation identifies the probable causes of the violations.

As a result of the investigation, it has been concluded that in our opinion the major problems at the facility are the result of some combinations of substandard operation and management procedures, and design and equipment deficiencies. Although it is difficult at times to differentiate between poor operation and design deficiencies, due mainly to the fact that good operation can at times overcome design deficiencies, this report expresses the opinions of the peer review Engineer and places the responsibility for the cause of the problem accordingly.

It is our opinion that:

a. Surging of the influent flow into the treatment plant is detrimental to both the BOD removal of the system and particularly to the suspended solids removal, as solids are washed out of the clarifier before having time to settle. This problem is caused by a design deficiency in the two influent pumping stations as both contain constant speed pumps, rather than variable speed pumps, and both stations are allowed to pump simultaneously with as many six (6) pumps operating at one time.

b. The system currently experiences foaming problems after decanting the aerobic digester. This problem can be attributed to deviation from the "UNOX" details of providing a trap on the digester overflow line by the contractor. As such it should have been the responsibility of the project engineer to ensure that the plant was constructed in accordance with plans and specifications.

c. The facility currently experiences start up problems after unscheduled shutdowns which occur on the average of 10 to 12 times per month. After each outage, the PSA unit and all associated mechanical equipment must be restarted manually. This in turn deteriorates the treatment efficiency of the system due to shutdowns. Although it is necessary to manually restart the PSA unit due to sequential procedures, it is not necessary to manually restart the associated mechanical equipment.

d. Sludge handling is a major problem at the facility. These problems are due to design deficiencies as well as to the inefficiency of the belt filter press to capture solids from the filtrate at an effective level. A review of the digester shows that only 10.8 days of digestion are provided as compared to 15 days minimum by EPA standards. Due to this low residence time, it is doubtful that sufficient reduction of volatile solids is occurring. To further complicate matters, the poor filtrate solids capture returns a high solids concentration to the treatment process, thus recirculating solids rather than removing them. A review of the specifications shows that the design engineer did not specify a solids capture requirement for the belt filter press equipment. It has also been suggested that the omission of a decant tank is a design deficiency. This report is in disagreement with this suggestion. Although a decanting tank is a useful tool in the dewatering of sludge, many activated sludge plants are operating efficiently without one. Rather, this report points to the need for additional digester capacity with decanting capabilitites included.

e. At least one additional flow meter would be useful, although not a necessity, in the operation of the plant.

f. A major problem at the facility is caused by connections of roof and basement drains to the system. During periods of rainfall, this inflow aggravates the surging problems caused by the pump stations. All roof and basement drains should be disconnected from the system.

g. Operators have not received proper training in the operation and maintenance of the system. This lack of experience and training in the activated sludge process, and particularly the "UNOX" system, could be a major factor in the plant's inability to meet effluent requirements.

A total summary of the estimated costs to correct all of the above-listed deficiencies is as follows:

Influent Pump Station Corrections	$30,000 *
Digester Foam Trap	15,000
Plant Electrical Corrections	10,000
Aerobic Digester Addition	150,000
Belt Filter Press Corrections	150,000
Sludge Flow Meter	8,000
Smoke Testing	25,700
Operator Training	40,000
Sub-Total	$428,700
Contingency	43,000
Technical Services	35,000
Special Services (Surveying, Soils Analysis, Resident Inspection)	41,000
	$547,700

* Does not include cost of pump interface controls between stations.

The above opinions were derived on the basis of information available at the time of the study. Further studies should be conducted particularly due to the fact that the wastewater treatment system presented by the project engineer as the most cost-effective alternative is a proprietary product and limited information and limited time was available during the peer review. Further studies should also be conducted with regards to the aerobic digestor and the belt filter press system, before plans for correcting these deficiencies are finalized.

2. REPORT PURPOSE AND SCOPE

The purpose of this report is (1) to identify the major causes of the inability of the treatment facility to meet discharge permit requirements and (2) to identify recommended improvements in the facility which should render it physically capable of meeting acceptable effluent requirements.

The report identifies the problems, the probable causes, and the estimated costs of corrections. It is not the scope of this report to recommend final solutions to correct the deficiencies.

3. INTRODUCTION

The Malden PSD wastewater treatment facility was placed in operation in 1980. Since that time, the facility has apparently consistently failed to meet its effluent requirements. Due to the facility's inability to reach its required level of treatment, EPA has caused an investigation of the facility to be conducted in an effort to determine the cause of the effluent permit violations. JRB Associates conducted the investigation for EPA.

As peer review engineer for the project, Kelley, Gidley, Blair & Wolfe, Inc. was retained by the Water Development Authority to also investigate the facility to determine the cause of the effluent permit violations and to provide an opinion regarding necessary corrections.

4. MAJOR PROBLEMS AND DEFICIENCIES

In early May, 1982, representatives of JRB Associates visited the Malden PSD facility to inspect its operation in preparation for filing its investigative report to EPA. In July, August and November, 1982, representatives of Kelley, Gidley, Blair & Wolfe, Inc. visited the facility also for investigative purposes. The major deficiencies noted in these inspections are as follows:

- Inflow overload;
- Foaming problems from aerobic digester;
- Operator Training/Preventative Maintenance Program;
- Suspended solids effluent violations;
- Start up after power outages;
- Sludge handling.

It is most difficult to characterize many of these deficiencies as design-related, although some are conceivably due to oversights during design. The following sections summarize the peer review engineer's opinion of the cause of these problems and the corrections recommended.

a. Inflow Overload

Review of plant flow records and interviews with operators at the facility indicates that Malden PSD undoubtedly has many customers with roof drains illegally connected to the collection system, as evidenced by the high flows experienced at the plant during rainfalls (as compared to dry weather flows). This practice is in direct violation of EPA regulations and the sewer use ordinance promulgated by the Malden PSD. Although responsibility for permitting connection of roof drains cannot be reconstructed, it is evident that these connections must be eliminated in order to preserve the efficient operation of the treatment plant. Malden PSD should initiate a smoke testing program and door-to-door inspection of each home to determine which roof drains might be connected.

Due to the current manpower shortage situation at the facility, the District will, in all probability, need to contract the smoke testing program to a qualified consulting firm. It is estimated that the cost of such testing would be approximately $25,700. If necessary, it behooves the District to institute whatever legal action might be available to insure disconnection of roof drains after offenders are identified.

b. Foaming From Aerobic Digester

Currently, decanting of the aerobic digester causes an introduction of foam in the downstream process as supernatant is returned to the plant flowstream. On September 30, 1981, Lotepro Corporation, current patent holder of the "UNOX" process, identified this deficiency to the District in a letter and further advised the District that this was due to a deviation from the plans by the contractor.

In accordance with "UNOX" plans, a trap was designed into the overflow control pipe to prohibit foam from overflowing through this pipe into the process flowstream. This trap was apparently not constructed.

It is estimated that correction of this deficiency would cost approximately $15,000.

Although this deficiency does not appear to be a major problem, it does result in increased operational costs.

c. Operator Training/Preventive Maintenance

Currently, the District employes seven (7) people to operate, maintain and provide administrative services for the facility. The staff consists of a superintendent, assistant manager, three operators and two clerical personnel. Based on state certification, all operators are qualified in their positions. However, few, if any, of the operators have received adequate training or experience in the operation of an activated sludge process, and only minimal training in the operation of a "pure oxygen" system. Some of the reasons for failure to meet the effluent permit requirements may be attributable to these shortcomings.

It is recommended procedure for the design engineer to require by specifications that the manufacturer provide adequate training for operation and maintenance of the installed equipment. If this training is included as a requirement in the specifications, it further becomes the design engineer's responsibility to ensure that the training is provided as required.

Interviews with the operators at the facility revealed that representatives of the manufacturer did appear at the site on several occasions; however, little instruction in operation and maintenance was given. It has not been established whether full operator training was required in the specifications.

Lotepro Corporation advised the District in a letter dated November, 13, 1981, that operator training will now cost from $17,175 for minimal training, to $39,450 for full operator training and quarterly updates. It is the recommendation of this report that the District obtain full operator training with quarterly updates.

The absence of an adequate preventive maintenance program has caused many operational problems, some of which may have led to permit violations. The current practice at the facility is to provide maintenance as needed rather than on a preventive basis.

Several factors probably influence the poor preventive maintenance program. Certainly the low morale of the operators contributes. The shortage of sufficient funds for such a program also plays a major role in this deficiency. A review of operations indicates that additional personnel may be needed at the plant. Also, staff personnel are busy at times repairing equipment other than plant equipment (the District's trucks) rather than utilizing time efficiently on maintenance of the plant.

d. Suspended Solids Effluent Violations

One major problem at the treatment facility is the discharge of suspended solids in excess of allowable limits established in the NPDES permit. This problem may be influenced by several factors, either individually, or most probably, combined.

First, and probably the foremost problem, is the surging from the two influent pumping stations. These stations are triplex constant speed pump stations which, in effect, provide a total of six (6) pumps discharging to the treatment plant simultaneously during high flow periods, such as after heavy rainfalls when the many illegally connected roofdrains discharge into the system. This results in a total flow of over 6,000 gpm (8.6 MGD) discharging to the facility. Obviously, a plant designed for average flows of 1.5 MGD cannot withstand surges of this magnitude, especially when only one treatment system train is in operation. Failure to design for the prevention of excessive surges in the plant influent flow should be considered a design deficiency. Since the pumps are constant speed pumps, large surges flush the solids from the clarifier sludge blanket over the effluent weir to final discharge. As only one train is in operation at any one time the clarifier weir overflow capacity is greatly exceeded. In our opinion, a more logical design would provide for variable speed control of the two influent pumping stations. The lift stations can be modified to provide for variable speed controlling. This can be accomplished (1) by installing variable speed controls, or (2) by replacing one pump in each lift station with a smaller pump of approximately 600 gpm to simulate variable speed controlling. It is recommended that a study should be conducted to determine the most cost effective choice. It is estimated that replacing one pump in each station with the smaller pump would cost approximately $30,000.

It may be advisable to lock out one pumping station while the other is in operation. This would require that telephone lines be leased between the two stations or, as an alternative, mine cable could be laid between the two. In either event, a hardware control system would be required. The in-depth study required to determine which of these methods is the most effective is not within the scope of this report. Therefore, no cost estimate has been attempted.

A second problem contributing to suspended solids violations pertains to certain sludge handling deficiencies. At the present time, the belt filter presses are obtaining no more than sixty to sixty-five percent solids capture on the sludge filtrate. A normal solids capture for a properly operating belt filter press is in the range of ninety to ninety-five percent. This undesirable return of large volumes of solids to the head of the plant overloads the solids handling capacity of the clarifier causing excess solids to be carried over the weir. Detailed studies of the belt press equipment should be attempted in an effort to determine whether the equipment installed has the capability of obtaining the required solids capture, and if not, whether modification is indicated or complete replacement is necessary to relieve the facility of the extra solids load. It is estimated that replacement of the belt presses would cost approximately $150,000.

e. Start Up After Power Outages

Currently the treatment facility often experiences as many as a dozen power outages per month. These outages are caused by electrical surges within the plant as well as direct power outages. When these outages occur, the PSA unit must be restarted manually because of the inherent sequential instrumentation. However, since all other mechanical equipment is controlled by the same system, all units must be restarted manually.

This design deficiency could be corrected by modifying the electrical system to allow for automatic restart of all equipment except the PSA unit. It is estimated that this modification would cost approximately $10,000.

f. Sludge Handling

Sludge handling is a major problem. The existing system not only requires a major portion of the available time of the operators, but also affects the quality of the plant effluent. It is reported that as much as 10,000 gallons of sludge is processed daily at the plant. At this rate, the design load of one ton of dry solids per day at design flow will be exceeded before the plant reaches capacity. It is also reported that sludge of one to two percent solids is dewatered by a belt press to only twelve percent solids before disposal at a nearby strip mine site.

Decanting of the sludge is reported to be very difficult due to the poor settling quality of the sludge and to foaming problems when decanting. Foaming problems have been addressed elsewhere in this report.

The omission of a decant tank should not be considered a design deficiency. Although it is a desirable adjunct in dewatering sludge, many activated sludge plants are operating successfully without a decant tank.

Rather than considering the omission of a decant tank as a design deficiency, this report focuses on the marginal residence time of the aerobic digester. The design residence time of the digester is 10.8 days at design flow. This is considered to be very low for the aerobic digestion process. Current EPA standards recommend a minimum of 15 days residence time, in order to obtain a volatile solids reduction of forty percent. It is unlikely that the sludge is obtaining forty percent reduction considering the digester volume which is provided.

One possible solution to this problem would be to incorporate a second stage aerobic digester equipped with swing arm diffusers which could be lifted from the tank for decanting purposes prior to dewatering. The estimated cost is approximately $150,000. /

A further complication, as observed elsewhere in this report, is the inability of the belt filter press system to obtain the proper solids capture of the filtrate. This deficiency may be causing a continuous recirculation of solids through the system, thus overloading both the clarifiers and the digester. Correction of this deficiency is also discussed elsewhere in this report.

Finally, the omission of sludge metering equipment renders it very difficult to monitor the quantity of sludge being returned to, and therefore, wasted in, the system. This design deficiency is not major in nature, but it should be corrected to ensure operational reliability. The design of the "UNOX" system which utilizes an air lift pump for sludge recycle and a slide gate for wasting sludge to the digester renders it difficult to design and install accurate metering equipment.

It is estimated that one additional meter for sludge flow monitoring would cost approximately $8,000.

Mr. WISE. Thank you Mr. Blair.

Before we begin questioning, would any other member of the panel like to make a statement?

Mr. STUMP. We are prepared, Congressman, to answer your questions.

Mr. WISE. I would like to begin the questions.

First, I would like to express my appreciation to Commissioner Stump, who has become the sewer commissioner in Kanawha County and who has been tireless in trying to bring consistency to sewer policy not only in the case of these two projects, but in the overall area known as Kanawha County.

I guess the first questions would be to the public service district personnel. Mr. Gates, were you here this morning for the GAO testimony?

Mr. GATES. Yes, sir.

Mr. WISE. Would you care to comment on the problems you have had with respect to making the plant operate properly?

Mr. GATES. Yes, sir. We have had continual problems since startup. We started connecting customers. We at first were trying to get the UNOX system to operate to meet the discharge requirements.

We found that we were having problems meeting the effluent limitations. As we continued to add customers we began to have excess water from storms, from downspouts and so on added into the system which compounded the problems we were already experiencing.

We had the Lotepro Corp. which took the license from Union Carbide to manufacture and build the UNOX systems.

They came in and looked at the plant to try to identify the causes of the problems we were experiencing in not being able to meet the discharge requirements. The main problem they found was hydraulic overloading from pump station surging.

Every drop of sewerage that enters the plant is pumped into the system and it is either feast or famine for the plant. We either have zero flow or we go to a maximum flow that hydraulically overloads the treatment reactors.

There is no flexibility in the design of the plant to allow any accommodation for flows coming in, rerouting flows, recirculating material from the plants back into the head works to try to keep a constant water flow through the system during periods of low flow or no flow when the pump stations are off.

We have tried everything that has been recommended to us by various agencies and individuals that have come in and we still are having trouble meeting the discharge limits. The problems we were having with excess flow from the downspouts——

Mr. WISE. Excuse me, Mr. Gates.

Mr. MOLINARI. Would you yield for a moment?

I get the impression that given the design of the plant itself and not being able to control the flow, the problem of operation is a very serious one.

Would I be correct in the assumption that design is at fault?

Mr. GATES. In my opinion, it would be.

Mr. MOLINARI. Thank you. I appreciate that.

Mr. WISE. In the GAO report referencing a consumer boycott, the GAO was last in the Malden area in October 1983. That is what they told me, at least.

Since then has that boycott ceased?

Mr. GATES. It has.

Mr. WISE. Was there a repayment of some of what was outstanding, the delinquent accounts?

Mr. GATES. We are beginning to collect some of the delinquents. Probably beginning in March is the first time in quite a few months that we have shown a credit balance at the end of the month. Since then we have continued to collect more than we have billed.

So we are making some progress on collection of delinquents and we are hopeful that the trend will continue.

Mr. WISE. Mr. Gates, there is reference in the GAO report and in other comments concerning the Malden problems to infiltration, to downspouts being improperly hooked up, to the consumer boycott as being causes of the Malden problems.

Recognizing that they are problems, if you unhook the downspouts and collect your delinquent accounts, are you out of the woods?

Mr. GATES. No, sir. If we collect all the delinquent accounts and if we get all the downspouts disconnected, we are still going to have problems in the plant in meetings the discharge limitations and also in keeping up the costs of the operation and maintenance and bond indebtedness expense.

Mr. WISE. Have you had any difficulty getting some of the major dischargers in the district hooked up to it? The report references to two schools, for instance, to the DuPont High School and the junior high school.

Why weren't they hooked up a long time before?

Mr. GATES. The problem there, the junior high school connected to our system I think some time in the early summer of 1983, and at the latter part of the summer we found out that they were a source of considerable inflow from illegal downspouts and so on as connected in through their sewer system.

They disconnected from our system and went back on their old system to alleviate the problem and flooding customers adjacent to our pump station. The DuPont High School, the problem with getting it connected there seems to be only with the Kanawha County

Board of Education, with them getting their people and materials and contractors and so on to perform the work.

Mr. Wise. To either Commissioner Stump or either one of the public service district commissioners from Elk Pinch, let me back up to Mr. Clark, who is employed by the county. Have you seen, Mr. Clark, the report submitted by Kelley, Gidley, Blair & Wolfe, the project cost information?

Mr. Clark. Yes, sir, I have.

Mr. Wise. Have you evaluated that when you were propounding your financing plan?

Mr. Clark. I reviewed it, yes.

Mr. Wise. Was that the basis for the plan that the county eventually put forth, this report, these figures?

Mr. Clark. The estimate that they used, that Kelley, Blair & Wolfe used in terms of the construction costs, some of the other costs associated with land easements, et cetera, was taken from the accountant's report.

Those numbers were all put together in terms of coming up with the——

Mr. Wise. Commissioner Stump, in the plan that has been put forward to get the Elk Pinch project under construction again, is there built into that plant anticipated return on litigation?

Mr. Clark. Congressman, the way in which we face the plan that we have now, basically we want to get the plant operational because of the health hazard we have.

As we move forward, we thought that we would get a better handle on exactly what this deficit would be, because when you look back at some of the numbers that have been projected through the life of this project, the numbers hit a peak and then the numbers start diminishing again, and the last report we had was that it was around $1.3 or $1.35 million short.

After that, we went back to look at what could be taken out and defrayed in terms of costs. I think one of the amazing things that you tend to do when you look at numbers, the financial numbers that we have had to try to put together in the last year, when you look at the bond resolution note that was originally used, you see construction cost of roughly $17 million, you see a technical services cost of $1.45 million, and yet, when you get to the point of what is construction going to cost, you see that construction is going to be somewhere between $15 and $16 million.

And part of this reduction was due to the intervenors, I think Mr. Blair said there a moment ago, that was a net reduction of roughly $600,000 in terms of looking at a different way of treating the wastewater.

But that $600,000 that was saved by intervenors basically now has been part of it, based on the contract price that I saw that they had, the PSD had between themselves and the engineer, that price had a ceiling on it of $1.5 million, and yet, when I look at the accountant's return, the accountant's return shows that Kelley-Gidley had been paid $1.9 million.

Those overruns there more than offset the reduction that the intervenors were able to get in the new plant.

Now, I am not talking about O&M. Mr. Blair addressed that. True, O&M is going to be higher. But what percentage we are not looking at O&M present time, what we are trying to do is get the project completed in order to eliminate the health hazards that we are faced with up in that area.

As you itemize each one of these line items, there is room in there hopefully that some negotiations can take place, so we had a plan of attack, we get the thing operational, and then start working with financial people to try to address the deficit.

The deficit we see right now is $800,000.

Mr. WISE. Let me ask you to follow up on that. Mr. Blair talked about a plan, others have talked about different plans to save or to get the project going.

I take it that you did not adopt the Baker Watt or Blair plan in which it was stated that it would not have resulted in a rate increase, and would have meant refinancing?

Mr. CLARK. I think in that particular case, what you are talking about is the meeting, the April 9, I believe was the report.

Mr. WISE. Yes, sir.

Mr. CLARK. At that meeting, the people did agree at that particular time on that deficit of $1.3 million, that they would ask the citizens up there to pick up, I believe it was 13 cents increase per thousand.

By doing that, they would qualify for a hardship grant, a $300,000 WDA hardship grant. In turn, then, the scheme was that they would go out and finance $1.46 million, and to do that, what they hoped to do was to put $60,000 of that into a sinking fund, where that would free up some of the money that would normally go into the sinking fund, but by doing that, two things happened.

They ignored the repair and replacement account that we needed, as experienced by Malden, plus the fact that in that sinking fund plan, normally that is only about a 5-year plan, and you have your debt service sinking fund plan filled—$460,000 at $92,000 per year, 5 years, would fill that up, their plan was to continue that indefinitely, or as long as the project lasted, 37 years.

So, in essence, what they were doing was putting a total burden back to the public. Did that answer your question?

Mr. WISE. Yes, sir.

Mr. STUMP. Could I expand a little bit on the Malden question that you asked on the income this morning. I believe we heard that the boycott was 20-some percent. Mr. Gates has said that that boycott, with the help of the county commission, and your office, we have convinced those people not to boycott and so to speak have faith.

But I believe the record should show, the West Virginia Water Development Authority met with the Commission, and Mr. Clark and your staff, and we showed them that if they were 100 percent in Malden of revenues, which I think we all agree that no public utility company can be 100 percent, that they could probably still not meet their required income on an annual basis.

In addition, I heard this morning from the General Accounting Office testimony on median income in the community of Malden. We know in Kanawha, Campbell Creek, and route 60—I heard the report that it was $19,000 or thereabouts.

I think if they don't have the figures, and I heard the chairman ask where they obtained those figures or the minority ask them where they obtained those, they said they arrived at, I think, they are pretty easy figures to get, they are done by the neighborhood census report, but the U.S. Government—the median income on the community of Malden is somewhere—I don't have it in front of me—but I will be glad to supply it to this committee, as well as to the GAO—is around $14,000 to $15,000.

Now, that is 1980. If they were using figures in 1970, some—I would say it would be maybe about the same, but inflation probably a touch lower. So, that figure must be cleared up that the median income of that community is not—the median income of the community of Elk Pinch is roughly $21,000 as of 1980.

But if you add 100 percent, had your revenue collected, on the community of Malden Public Service District, you might have a play of $10,000—$940,000-some is needed to meet debt service and O&M, and I believe that is what their revenue is, and they are having to go right now, Mr. Gates, with another rate increase, or considering another rate increase.

One a year is just something that is unspeakable. The inspector general's office in 1981, made a report called the six-pack report and they said to us, very, very much, do not build these systems unless you have 5,000 or more customers.

In October 1981, this committee issued a municipal wastewater report, we have that in Kanawha, Mr. Chairman, maybe we can get it to GAO, we heartily concur with the report.

There are better ways to treat sewage in rural unincorporated areas. But I wanted to clear the median income on that community. We will supply those figures. Those are U.S. Neighborhood Census Reports, 1980.

Mr. WISE. Mr. Chairman, I had one more question dealing with the expertise available at the local level in preparing the certification to the bank we heard about today from GAO. It might be better if we waited until after the vote.

Mr. LEVITAS. There is a vote in process now, and I think we have got about 7 minutes. I would suggest then that we stand in recess for 15 minutes, and then we will continue with your questioning and I have some, and Mr. Shaw, and Mr. Molinari may as well.

The subcommittee will stand in recess for 15 minutes.

[Recess.]

Mr. LEVITAS. The subcommittee will please come to order. The Chair recognizes the gentleman from West Virginia, Mr. Wise.

Mr. WISE. Thank you, Mr. Chairman.

I would like to continue this line of questioning, then I will turn it over to you and that line has been at the present time with the public service district personnel and County Commissioner Stump and Mr. Clark.

Turning to either Commissioner Stump or either one of the two public service district commissioners from Elk Pinch, were all of you present in the room when the GAO was testifying this morning?

Mr. STUMP. Yes, sir.

Mr. WISE. Did you hear the testimony concerning—well, the reason or reasons that they attempted to identify for the default, the $1.3 million deficit.

Mr. STUMP. Yes, sir.

Mr. Wise. As I say, I hedged on that because they were ambiguous and said they could not clearly state what the problem was. Let me ask you this.

If you remember, they testified that the procedure is that a monthly report—please stop me if I am wrong or you didn't understand it that way—that a monthly report, there was a cashflow analysis and that the public service district commissioner, in this case they mentioned Commissioner Hafer, along with the consulting engineer in this case, Mr. Downey—would jointly sign a report, a certification that the local share was adequate and that would be given to the bank to satisfy their obligations in regards to the noteholder resolutions.

Is that the process as you understand it?

Mr. Evans. Yes, that is the process as the two commissioners sitting here understand it.

Mr. Wise. Did you participate in that process as commissioners? What I am getting at, Mr. Hafer signs it, is there an approval by the commission of that?

Mr. Evans. It is approved at a monthly meeting for all outflow of cash. We take a line item and approve the line items as a cash outlay, yes.

Mr. Wise. So that while it is Mr. Hafer's signature on there, I believe he is the chairman of the public service district commission, at least two of the three commissioners approve his action; is that correct?

Mr. Evans. Basically that is true. These are the figures that are presented to us by the consulting engineer.

Mr. Wise. Who presents those figures to you?

Mr. Evans. The consulting engineer and basically Mr. Jim Downey.

Mr. Wise. Do you have any individual source of information in compiling that report?

Mr. Evans. Well, it was my understanding, Congressman Wise, that Krisher & Krisher, who are certified public accountants, was also verifying all of the financial outlays, all of the numbers, so we would not be in a deficit spending mode. That was my understanding.

Mr. Wise. You say that is your understanding. Where did you get that understanding?

Mr. Evans. Well, I have always understood that a certified public accountant is just what it says, he is a certified public accountant.

When you hire him to do accounting work for you, then as a layman he is working there for you to make sure the numbers come up correctly.

Mr. Wise. The questions—let me ask, turning back, was Krisher present at each one of these meetings where you approved Mr. Hafer signing that certification?

Mr. Evans. No, he was not, sir.

Mr. Wise. Were representations made to you that Mr. Krisher had looked at this; it was done by a certified public accountant?

Mr. Evans. Maybe two meetings Mr. Krisher or a representative from the firm, it was either a monthly meeting or a special meeting, I can't say—I can't tell you directly whether it was a monthly meeting or a special meeting because in the fall of 1983 we had so many meetings, it is just one ran into the other.

I do know that his firm or his group were at meetings explaining their process to us. In fact, Mr. Clark, Mr. Hafer, was at the accounting firm—correct me, is that September—in September of 1983, and Mr. Krisher himself told us at that time that it looked like we were going to have some financial problems but I really didn't understand what he was talking about because he said you know when you make the payment it was a payment of 500-some-odd thousand dollars and they said it looks like you are going to have some financial problems, that is he passed it by.

Mr. WISE. This was in September of 1983, correct?

Mr. EVANS. Yes, sir.

Mr. WISE. Did you hear the testimony from the General Accounting Office, however, that your district has been, as far as they can tell, in technical default since May 1983?

Mr. EVANS. Yes, sir.

Mr. WISE. When were you aware of that?

Mr. EVANS. As far as default?

Mr. WISE. Yes. Were you aware in May, June, July, August you might be having those problems?

Mr. EVANS. Not until October, sir.

Mr. WISE. When I say "you," I am speaking of you as a commissioner and the other commissioners approved expenditures through the summer months, I presume, based upon invoices presented by the consulting engineer; is that correct?

Mr. EVANS. Yes, sir. Based on what the consulting engineer and our project coordinator recommended to us; yes.

Mr. WISE. Did you at any time suspect during that period that you were running a deficit?

Mr. EVANS. Not, no not until in the latter part of October, sir, no.

Mr. WISE. I want to ask again a question that I asked you. Do you, as a public service district commissioner, have independent resources to determine the accuracy of what is put in front of you to sign, in terms of the certification to the bank?

Mr. EVANS. No, sir. I must rely on professional people that were hired by our district to do this job.

Mr. WISE. Whom were you relying on in this case?

Mr. EVANS. In this case I was relying on our consulting engineers, Kelley, Gidley, Blair & Wolfe, and Krisher & Krisher, our certified public accountants.

Mr. WISE. Mr. Stump.

Mr. STUMP. Yes, Congressman, in answer to why possibly the county as well as the public service district would not know until October or September of 1983 that they were in a deficit picture. Report No. 17 of 83-1-83, does not show a deficit, and this would be all the three public service comissioners would have in their hands, a simplified accounting report on where the money is, how the money is coming in, revenues and expenditures.

But in October I think report No. 19, Mr. Clark, which would have been 2 months later, suddenly showed this deficit.

So the GAO report reports that in May of 1983 it went in deficit, but report number 17 shows it to be balanced pretty good by simply moving the line items.

Mr. WISE. Is that a report that the public service district commission presents to the county or to whom does that report go to?

Mr. STUMP. By law it is submitted to the county but it is a month report that is given to the three public service district commissioners. This is prepared, Mr. Clark, by, in this case, Krisher & Krisher, the certified public accountant.

Mr. WISE. Mr. Blair, could you shed any light on that?

Mr. BLAIR. Yes, I believe I could, Congressman. The biggest confusion that happened insofar as this project is concerned, resulted from the capitalized interest numbers which were indicated in our original presentation to the public service commission.

These numbers were furnished to Kelley, Gidley, Blair & Wolfe by Baker, Watts & Co. and we included these numbers and part of the overall project cost as well as relating to sources of funds.

That is basically what happened with the project is everyone felt that sufficient moneys were available because of the reported earnings that we were going to have as a result of the arbitrage which I pointed out earlier in my testimony, it was reported by testimony before the public service commission that we should have surplus funds in the project of $1,150,000.

I will be glad to submit information in that regard to the committee so you will be able to see it from the written testimony of the public service commission.

Mr. WISE. I yield to Mr. Molinari.

Mr. MOLINARI. Thank you.

What were the estimated earnings that were factored in on the arbitrage you just referred to?

How much did that amount to?

Mr. BLAIR. If I might, I will be glad to do that. I asked Mr. Prolman to distribute my April 9 report. Does everybody have a copy of that?

Mr. WISE. No, I can get it later on, if you can give me the figure as to a ballpark estimate, I would be satisfied at this point.

Mr. BLAIR. Yes, sir, the original earnings that would have been projected, that would be the interest to be earned on the capitalized interest as well as the interest to be earned on the construction notes, that would be noted under the heading entitled "Revised public service commission" would be a total of $1,379,617.

That is the originally projected earnings. Now, on a revised basis, the actual earnings from the construction note issue turned out to be $2,882,372. Now, that sounds real good but when you look at the capitalized interest numbers that originally were shown in the reports submitted to the public service commission, the interest numbers in the revised public service commission were $1,233,170, with a currently estimated, which is an actual figure of $2,960,000—that number to maybe it make it a little clearer, which is the number which results in paying for this use of the $12.8 billion over the 2½-year period.

It falls out in five slugs of $592,000 per slug and that is the source of that number.

My contention would be that for reasons unknown to me, and there is nobody—there are lots of overruns and lots of numbers that have been changed from what they were originally thought to be—there is not in my mind any intention of fraud on the part of anybody—what happened, what should have happened was that the capitalized interest figures that appeared in the offering statement should have been used from the beginning to analyze the monthly statements which were furnished to the district commissioners.

For reasons unknown to me and I am sure unknown to everybody else, they went back to the revised public service commission information and used that as their benchmark, if you will, to compare the project cost.

Now, that happened. That comes under the heading of "no excuse, sir." But that is just the way it is.

Mr. MOLINARI. Would you mind identifying who you are referring to when you say "they"?

Mr. BLAIR. You mean, the accounting exhibits are prepared by Krisher & Krisher.

The financial information is furnished by Baker, Watts & Company and E.F. Hutton & Co. Then these numbers are put together. Any project such as this you have various professional categories involved.

Historically, the individual professionals feed the information into the consulting engineer, of what their estimated costs are going to be, and then these are all put together under project cost and sources of funds. It is a matter of using information developed by others and not developed solely by the consulting engineers—this has provided some confusion in this project.

Mr. MOLINARI. Certainly for myself it has provided some confusion. I am trying to place this on a more simple basis so I can understand it.

Mr. BLAIR. I hesitate to do this but if I could, I would like to volunteer an exhibit that I prepared so that I could understand it on a construction note issue as to how these projects work. If you would be interested, I think——

Mr. MOLINARI. If I understand correctly, there are some modifications to the original design layout.

Mr. BLAIR. Yes, sir.

Mr. MOLINARI. Now, do you have any idea what the resulting costs were as a result of those design modifications? Did it increase the cost first or decrease them?

Mr. BLAIR. Well, that would depend upon the various categories. As an example——

Mr. MOLINARI. Let's take the total. I am interested in the total, not the subdivisions of which some may have reduced the cost and some may have increased the cost.

Mr. BLAIR. Well, the total—well, that is easy enough. Our estimated total is an example on the technical services. That is an increased number.

Estimated for the construction that is a decreased number and that nets out the moneys saved by the lower cost, waste water treatment plant, which I discussed in my oral testimony and also the other additions which were results of line relocations, restrictions as a result of right-of-way problems and other matters such as that.

A lot of the lines in this project were moved from the yard areas down into the street areas. Ordinarily when you would design a public works project, you would want to have the source in the street areas. Because of reduced costs, it was originally estimated that we could save money by putting them in the yard areas.

As we got into the project and found out that we had moneys available, that is, all the excess funds we were going to earn from arbitrage. It is one example. It seemed reasonable to bring it back into proper engineering—we put it down in the street.

This, in turn, increased costs, increased dollars spent. Your legal administrative cost of issuance increased from $105,000 to $573,000 in round numbers.

More properly stated, $175,994 to a current of $573,006. These numbers are our best estimates of what we feel the total project cost will be and I am very confident of the numbers that I recite to you.

Mr. **Molinari**. Let's try a different line of questioning. Since I have not been able to get to the point I'm trying to reach.

Mr. **Blair**. The project cost has increased overall from $22,295,000 to $23,930,200.

Mr. **Molinari**. Do you mean $22 million?

Mr. **Blair**. Yes, sir. I am sorry. From $22,295,613 to $23,930,200.

Mr. **Molinari**. OK. So we are talking about a difference of about $1.7 million. Is that the difference?

Mr. **Blair**. Yes, sir.

Mr. **Molinari**. When did you become aware of the fact that there was going to be a cost overrun to that extent?

Mr. **Blair**. I might add the $1 million, it is confusing enough. The $1.7 million overrun is offset by additional earnings that I recited earlier from the construction note issue.

Mr. **Molinari**. All right. Let's stop there then.

You had expected when you made these modifications that the differences would be absorbed by the arbitrage payments.

Mr. **Blair**. Yes, sir. That is right, but what we looked at, what all of us looked at, was the original information which contained instead of an example in the capitalized interest, instead of the number of $2.960 million, it indicated the capitalized interest would be only $1,233,170, so we had two wrong numbers there. The wrong numbers were in there from the beginning of the construction of the project.

So we really potentially—we could have been fooled all the way through the project in spite of the complicated bond resolution computations that Jim Downey went through——

Mr. **Molinari**. If there were no modifications at all and you went with the original design layout, and if the estimated income levels were that which were projected, then am I to assume by simple arithmetic you would have wound up with a surplus or excess of $1.7 million.

Mr. **Blair**. I am sorry, sir. Would you——

Mr. **Molinari**. If the modifications were not made, and you were held to the original cost, the project would have cost $22,295,613. If your projected earnings from the arbitrage held true, then I would assume that you would have wound up with a surplus because the actual modifications would cost $1.7 million which is about the amount of the deficit.

Mr. BLAIR. What they were originally projected to be, yes, sir, it would have ended up to be a balanced project.

Mr. MOLINARI. I understand that. Thank you very much.

Mr. LEVITAS. Let me ask just a couple of questions.

Mr. Stump, could you sort of give me an inside look on what exactly was the role in the approval process of the county commission. I know formally what the role is, but I mean from your point of view—in the Elk Pinch or Malden project. When you were presented the recommendations of your professionals as to the type of treatment system, or the amount of the user charge, or the question of affordability, what information, what was the process, the discussion, the debate, analysis, that the local elected officials such as yours went through in this process?

Mr. STUMP. Congressman, unfortunately, I was not a county commissioner at the time the process application for local moneys was submitted to the Kanawha County Commission, but I could tell you the process of one that is basically identical to the Elk Pinch, Sissonville project, which is yet to go before the PSC.

The Kanawha County Commission does not see really any input into the layout, design, of any project public service district has prior to my going on the commission in 1983 when I set some new guidelines that we would participate in the selection. If we were going to participate in the funding, we would participate in the selection of the hiring of the engineer.

We did this, did not do this on the Sissonville one and a former agency of ours, the regional development authority, had very little input other than processing applications for the local money, most of this local money would be budgeted out of our Federal revenue-sharing money.

Obviously there is not enough in the general property tax base. I could not say how the Elk Pinch one came before the Kanawha County Commission, but I can say the one that is there now, that has yet to get final funding by both Federal, State, and approval of PSC, that I had little, if any, input until they needed my $700,000 vote and then if I asked questions, like Federal regulation 40 CPR, about title and easements will be upfront, 100 percent, I was told by DNR and by the public service district, in a public meeting which politically when people need sewers, and I agree that there is source problems in my county, that emotionally they are willing to pay any price until they get the bill. I am told that I am anti-source. I don't think you would see property acquisition of this line item here on land and easements increasing from the budgeted amount $100,000 to the actual amount now $630,000 if they had followed Federal regulations.

But I am told in public court meetings and Kanawha County Commission that is an unreasonable regulation.

Well, as we see this one right now, I think it was a fairly accurate regulation put in by our big brother Federal Government.

I would like to say one thing, though, indicated by the Congressman that he was trying to find out when it indicated total cost could be told to the citizens of the system. Under county commission regulations of public service districts, my first order of business after being sworn in in January 1983 was to direct the public service district of Elk Pinch to give me an indicated total cost of that system.

I wanted and waited patiently and in March it was released that the indicated total cost—March 1983—that the indicated total cost of the system and was published in the Charleston Daily Mail, an afternoon newspaper, that the total cost of the project would come in under total cost and, in fact, the rates may be reduced to roughly 389 per thousand from 426.

That sort of quieted the community down until we could get another 10 to 1 percent off the pipe in the ground. But my reason for becoming interested, even in running for the Kanawha County Commission, was following the Elk Pinch as a private citizen and it is very obvious Congress mandated, and the committee, that anyone who understands cash flow analysis could see that this system if they went into technical default, in September of 1982, it recovered basically by 27,000 in 1 month and 52,000 out of technical, then went back into technical default.

So, it was not picked up for 12 months. The commission did not receive an indicated total cost report from the public service district. They received a total cost of construction contracts, and I don't think any of us have to look very far to understand the word in Webster's means—indicated total cost means total cost, and the community was quieted down, was told by publication in the daily newspapers that the system was going to come in under and the rates would be reduced because of the great savings on the collecting plant that the intervenors had recommended and it was going to come in less.

We are hearing testimony now that that is why it is going to cost more to run it. But those documents, evidence, are there, the cash flow analysis speaks for itself. I would assume this is either prepared by the bank or by Baker, Watts. It was received by Kelley, Gidley, the consulting engineer, at least it is stamped "received."

But as far as the process of the county commission in West Virginia, as I stated earlier, once we appoint these public service districts under the law, Senate bill 95 of the State of West Virginia, they become rather autonomous and they become a political subdivision of the State and they are subject to great salesmanship.

Mr. LEVITAS. Thank you.

Will the county bear any liability for having to make sure that areas within Kanawha County comply with Federal and State water quality laws?

Mr. STUMP. I am not sure of that law, Congressman. I can say as far as pollution problems to this particular district, if we cleaned it up 100 percent tomorrow, that the great polluter is 2 miles on up the river and that is the city of Clendenin, which, being a municipality, does not have to get in compliance until 1988, and they do what you and I know as straight pipe. Their complete system goes into Elk River. They have no collection system period.

So if you were to clean up Elk Pinch 100 percent, you are still polluting very greatly. I believe the enforcement of pollution in Kanawha County as well as the State of West Virginia lies in the hands of the State agencies and the department of natural resources.

Mr. LEVITAS. Do I understand that there is major pollution being added upstream from——

Mr. STUMP. Oh, yes. Congressman Wise is as knowledgeable as I on this. He and I have walked those lines.

Mr. WISE. If I could interject, Mr. Chairman, briefly, Commissioner Stump is fortunate that his jurisdiction stops at the county line, but the river continues through several more counties, Braxton County, Gassaway, Sutton, you name it, and Elk Pinch is at the foot of the stream getting all that is coming downstream. Nobody is concentrating on that. Everybody focuses on Elk Pinch.

Mr. LEVITAS. Let me ask one more question and then I will have to leave for a few minutes and Mr. Wise will take the chair.

This is hypothetical, but let's assume that Elk Pinch's financing is not resolved. What is the county's responsibility or financial liability for picking up the pieces?

Mr. STUMP. I don't think the county has a financial liability, but I would surmise hypothetically that the citizens—by the way, Senate bill 95 is written in the State of West Virginia—that they are subject to individual liens and lawsuits against their own real property. A gentleman sits as a Congressman now who had some input into writing Senate bill 95, but I don't believe the county would have any responsibility as to bailing out the public service districts, Congressman.

Mr. WISE. Would the gentleman yield.

Is it not the case that both the West Virginia Department of Health and the EPA have threatened individual enforcement actions in the last few months against those citizens?

Mr. STUMP. Yes. You are looking at one.

One further statement on the pollution problem, Mr. Chairman. I heard and read that alternative methods of investigation before we build a particular system, that one of the reasons that Elk Pinch had to have a major collector system was that only 15 to 20 percent of its sewerage was in what we call package plants, community systems. I have one in my community of 30 homes. I thought that interesting because we did a count and found out about 1,100 of the homes of the 28 were already on DNR-approved package plants, possibly in violation of MDBS. But when the State health department just recently at my request looked at the health problems that were created by the breaching and abortion of lines by construction, which is no fault of a construction firm, totally feeling they were going to look on within 30, 60, 90 days, said and reported that 60 percent of the sewerage that would be processed in the Elk Pinch geographical area was on package plants.

You are well aware of the 1972 part of nobody can be hooked on or it is noneligible money of homes after 1972. You will—we need a system at Elk Pinch. It should have been hooked on to the city of Charleston. The Charleston connection is about 1 mile away. The Charleston system, that is another area, but the figures simply don't add up to a serious pollution problem in that area.

Mr. LEVITAS. Thank you very much, Mr. Stump.

I have some more questions, but I have a meeting that I have to be at at 3:30 at the State Department and I will be back shortly.

Mr. Wise, if you will assume the Chair.

Mr. Wise [presiding]. Congressman Molinari.

Mr. Molinari. Thank you, Mr. Chairman.

Commissioner Stump, on page 5 of your testimony, you talked about some problems that you had. I think that we need to identify some of the parties that you are making reference to.

To begin with, you say "We have asked for help and guidance." Who did you ask for help and guidance? I notice on the top of the page you mentioned President Reagan and then you referred to region III of EPA which you said was the original source of your difficulties. Specifically, I would like to know to whom you addressed those requests for help and guidance.

Mr. Stump. We have asked—Congressman, we have asked the Governor's office of economic development. We have asked and received most of our help from our Third Congressional District office as far as supplying us support materials in that area. Through our Congressman's office, we have asked and had meetings in Kanawha County with the Environmental Protection Agency. Basically, those are our three particular people to turn to.

Mr. Molinari. Now, I would like to then get into the second part of that statement where you say you received vague meanderings sprinkled with threats of enforcement. I think you even made reference to the fact that you were one of those that were threatened. Again, I would like to expand upon that and find out who was threatened and by whom.

Mr. Stump. I cite, Congressman, in one of my exhibits a memo from the West Virginia Department of Natural Resources, attachment 1.

Mr. Molinari. It is rather lengthy. Can you refer to a particular section in that memorandum?

Mr. Stump. Well, the first part of it is speaking basically, a criticism of Congressman Wise and myself's office, even questioning agencies, in other words, that remain silent. But then if we go to page 3, I believe, take enforcement action against owners of all treatment plants within the PSD that are not meeting current permit standards. It has been reported that there are 20-plus of those type package treatment plants, mine being one. In 15 years, Congressman, our package plant, which we paid to have sanitary engineers certify it with the department of health, really was never put under any type of threat to close down until we were told that ours was not in compliance.

In addition, I think the records will show at that point that all of those package plants in Elk Pinch were inspected by DNR, and I believe the department of natural resources inspected all those package plants in Elk Pinch and I believe Mr. Clark at the same date—department of health, I am sorry, did the reporting, and they all had the same date on the violation inspection.

Now, I submit to all people to come into this 55-mile provincial community and inspect all of those in 1 day. I was told by GOECD at that meeting that we attended and we supposedly were trying to work an agreement and it was in a gesture to me, "Yours will be one of the first ones we shut down, package plant."

I said, "Don't let any grass grow under your feet on the thing, that there are more people in this community than just I."

I think if you will read through here that the department of natural resources said that it will initiate a media campaign to inform the residents of the half truths and misinformation being given to the media by Commissioner F. Douglas Duncan and Congressman Bob Wise. They feel their performance has been excellent on it. Fortunately, they never got that off the ground.

Mr. WISE. Will the gentleman yield.

Mr. MOLINARI. Yes.

Mr. WISE. I think I remember this memo a while back. Was this memo ever made public?

Mr. STUMP. No, sir.

Mr. WISE. If I may refer to the gentleman's memory, it is, I believe, a memo from Fred Heights, PE, to Warren Means, PE, dated December 23, 1983, Elk Pinch Public Service District office closing.

Now that I look through the memo, I see, for instance, references that, turning through it, concerning the enforcement action, for EPA to enforce conditions a step three grant by court action; is necessary before an eligible cost caused by a shutdown becomes excessive—et cetera.

Is there another reference in here to those who were raising objections at the time, Mr. Stump?

On page 3—here we are. The EPA—other references here to Commissioner Stump and to Congressman Wise. Initiate a media campaign to inform the residents of the public service district of the above actions and to refute the misinformation given to the media by Commissioner Stump and Congressman Bob Wise.

I am glad to see such a constructive response by our State officials. Mr. Stump, or Mr. Clark or Commissioner Evans or Commissioner Jarrett, after the meeting in the Kanawha County courthouse in which the EPA, the department of natural resources, the water development authority, the county commission, the Congressman's office, members of the State legislature from Kanawha County were in attendance, I believe, weren't specific requests for financial assistance made of the EPA, and then, weren't the requests denied later on? Did you not receive a noticeable increase of enforcement actions or threats by State and EPA officials, and, if so, would you detail those?

Mr. STUMP. All of those occurred after that point that I spoke to on the inspection report. Obviously, the moratorium that was put on by the State health department is rather an asinine antipollution system in itself. It also put a moratorium on putting people on water tap reports. If we have a sewerage problem, I would like to get more of them on water tap rather than having the water drawn from the wells.

Mr. WISE. That was a moratorium on installing or providing water service to any new hookups, isn't that correct?

Mr. STUMP. Yes.

Mr. WISE. Regardless of what condition their well water or other source of water might be?

Mr. STUMP. Yes; the Health Department, at the request of the county commission, took a look at the serious health problem and at the same time we wanted the health department to look at the problems that would be caused by citizens in trying to hook on to the new system. But the health department took one attitude, there is a serious health problem coming before summer in Elk Pinch because of the breached septic systems that are up there. But the health department's attitude was to take enforcement action against those individual homeowners and have them to get their system back into operation.

Now, fortunately, they took their first step first, a moratorium, but they have four plans of action and one is enforcement procedures against the individual homeowners for their package plants and their septic tanks polluting and many of these citizens had perfectly good septic tank systems before they were breached by a new sewer line that came through.

Mr. MOLINARI. Would the gentleman yield?

Mr. WISE. It is your time.

Mr. MOLINARI. What would the nature of that enforcement action be? What alternative would a homeowner have in those circumstances?

Mr. STUMP. He would be fined daily, sir.

Mr. MOLINARI. Fined?

Mr. STUMP. Daily.

Mr. MOLINARI. Did you say fined daily?

Mr. STUMP. Subject to daily fine.

Mr. MOLINARI. In order to avoid being fined, what could that homeowner do?

Mr. STUMP. Submit to an exorbitant rate or any rate and approve a new rate to allow this system to be finished at any cost.

Mr. MOLINARI. Would there have been some type of form that he or she would have signed consenting to the charge?

Mr. STUMP. No, sir. The real pressure behind that in my opinion was to get the community by intimidation to say, you know, it is easier for me to go right now at the $5.26 rate or whatever the rate may be because to change the rate from its present PSD-approved structure of $4.26 would require a petition be submitted to the citizens of that community. In its present form, the community is polarized, it wouldn't approve 13 cents.

Mr. MOLINARI. I have one last line of questioning. You have indicated in your statement that there are four federally funded sewer projects with a total financial commitment of over $60 million, all within miles of the State capital and all are in trouble. Now, this is a problem that is not unique to your geographical area. It is a problem that we have in too many sections of the country. From your perspective in trying to do the job, and trying to clear up problems that existed in your own area, you had two places essentially to turn to for assistance. You approached both the State and Federal Government for help?

Mr. STUMP. Yes.

Mr. MOLINARI. I judge by your answers that you didn't receive any relief from either the State or Federal Government?

Mr. STUMP. No relief.

Mr. MOLINARI. OK. Now, then, one last question.

For the sake of yourself and all others in the country, how would you recommend that projects like this be handled in the future? What I mean by that specifically is this: There is still a debate going on as to whether the Federal Government should delegate the responsibility to the States in areas like this or whether, since a good share of the Federal Government's money is involved, whether it shouldn't be more directly responsible. I get the impression that although there should be some oversight review, there are some States that probably have the capabilities and the expertise to deal with some of these problems. However, smaller communities might have a great deal of difficulty.

Having seen the problems that you have outlined here and how they present such monumental problems for small communities in the United States, do you have any recommendations as to how this program should be handled differently?

Mr. STUMP. Yes. I would like to start with the first level to the Federal Government level. I think the State of West Virginia—and I speak for just that State—must change its Senate bill 95 which forms public service districts. In the county of Kanawha, there are 230,000-some people. We have 28 unincorporated public service districts. The first level of government for them to go to is their county commission that has any expertise or staff to support them, but unfortunately they only have to report to the county commission when they need to be reappointed or submit their annual budget. That needs to be changed.

At one time in the State—as far as the administration of Federal moneys coming down from the Federal Government to the State level, I believe the Federal Government needs to take a more active part in overseeing the administration, more than just cursory, more than just initially. I think that would solve the problem.

In 1981, we did, the Environmental Protection Agency did, and the Congress did a fine job in saying, "Look, we are going to 55 percent, we are going to 85 percent the other way. We are going to force engineers to look at alternative methods," because they would go after the 85 percent money. We have an alternative method.

In a community of Pratt, it has been an alternative method for years and years. There are 200 to 300 homes. There is a collector system, a 230,000-gallon holding tanks. Once a year it takes its sewerage waste to the city of Charleston which has ample area. Now, in Elk Pinch, we will have ample area. We built a plant there that could probably handle the rest of the county's sewerage. Their sewer bills are 20 percent of their water bill. That is very reasonable, very reasonable. That is an alternative method that has probably been up there since 1965.

I am not worried one bit. I see a fear tactic being put on by professional engineering firms, small public service districts, the State of West Virginia, the bureaucracy to get them all in under the gun so we can get the 75 and 25.

I call to your attention the reports that I read. Elk Pinch only has 58 percent Federal money and 42 percent local and State. Malden has 60-some percent Federal money and the remainder. None are at 75 now, so you haven't hurt anyone with that. What you have done is you are going to make engineering firms with this alternative method of sewerage treatment think and come up with other methods.

You have stated, and we know that a septic tank is a perfectly acceptable way of processing sewerage provided a couple of things, one that it is maintained by some form of government. In our own

State now by this thing, we have two county PSD's who finally realized their obligation is beyond spending Federal money. Their obligation is to go out and knock on doors and say, "We will take over your septic tank for $9 or $10 or $11 a month and pump it." Communities will buy that. When you are spending, as you have done in West Virginia, $7,600 a home to put this type of system in, we are not spending money very wisely. I still believe the Federal Government should be heavily involved in clean water, wastewater treatment. I think the Federal Government should become more involved in supervising the State. Then I think counties have a job, and I have done it in our State, of changing our law and bringing these labors which make $50 a meeting and a maximum of $750 a year under some more rigid monthly accounting system to a centralized form of government.

The Congress gave $2 million in revenue sharing money. Last year in Kanawha County, we used $1 million of it for water and sewer. We didn't ask you to supervise us or for one thing. We put 980 homes on it with that money. By extending what we presently have, anyone who knows the logistics of any State knows that if you are within 10 miles of a metropolitan area, you don't need very many centralized systems. I think you are on target.

Mr. MOLINARI. Thank you for your answers.

Mr. Evans.

Mr. EVANS. One addition I would like to add to that.

The word accountability—I have used the word accountability since I was first appointed to the PSD and I still use it. The EPA is not accountable, our DNR is not accountable, our health department is not accountable, our attorneys are not accountable, our consulting engineers are not accountable. There is no one in the system that is accountable. The only persons that are accountable are the three district commissioners who are lay people, and I think that if you are going to write anything in the law, you really should make some of these other people or other agencies accountable or their actions. Thank you, sir.

Mr. MOLINARI. Thank you very much. I appreciate the candor and the answers of both of you gentleman. I think it helps a great deal.

Mr. WISE. Mr. Evans, would you list the occupations of the three Elk Pinch Public Service Commissioners?

Mr. EVANS. Mr. Hafer, the chairman, is an undertaker. Mr. Deer works in construction and myself, I am a—I have worked with water clarification in coal preparation plants.

Mr. WISE. Do you work full time for the Elk Pinch Public Service District?

Mr. EVANS. Yes.

Mr. WISE. I realize you do in one sense, but are you——

Mr. EVANS. My normal work time is like 40 to 50 hours a week. Elk Pinch takes anywhere from 20 to 30 hours a week of my time.

Mr. WISE. Mr. Gates, would you list the occupations of the three Malden Public Service District Commissioners?

Mr. GATES. One is retired from DuPont Corp. The other is unemployed, coal mining, and the third is a salesman for Midwest Steel.

Mr. WISE. You are an employee of the Malden Public Service District?

Mr. GATES. Yes; I am.

Mr. WISE. You are the only professional involved in the actual administration of that operation, aren't you?

Mr. GATES. Yes, sir.

Mr. WISE. To anyone of the Elk Pinch Commissioners, Commissioner Stump or Mr. Clark, is the Public Service District resuming construction? Mr. Evans?

Mr. EVANS. Are we resuming construction?

Mr. WISE. Yes, sir.

Mr. EVANS. Yes; we most certainly are. Our construction—we have a meeting tomorrow evening with the company that is constructing our sewage disposal plant, we look for construction to start at or about the first of June.

Mr. WISE. What I would like to request, because we still have another panel to get on, I have one more line of questions I would like to ask this panel. I would like to ask if any of the panelists presently before us has any objections to answering written questions from this subcommittee. Hearing no objection, then let that be noted and we may be submitting you some questions.

Mr. Downey, were you present today when the General Accounting Office talked about the deficit problems of the Elk Pinch Public Service District?

Mr. DOWNEY. Yes, sir.

Mr. WISE. Did you hear their testimony, quoting from page nine of Mr. Wessinger's report, that:

> * * * The consulting engineer could not provide us with documentation showing how the local share amount in the certification was computed or a basis for estimating that additional funds would be available to cover the local additional share costs. Our analysis showed that the $12.8 million balance was not met in May 1983 and thereafter.
>
> As a result, the project was in technical default of its note resolution 7 months before the default was disclosed.

He also noted that he had asked three times for that information. I thought you might want to respond to that.

Mr. DOWNEY. Yes, sir. I would like to respond to that. The work sheets that he is referring to there are not a formulated work sheet, whereas we were given by the bond council. It is simply a work sheet where I take numbers from the various accounts, given that information from the depository bank or the accountant and work up a number to put into the work sheet that goes to the bank.

Since we discovered the deficit in October 1983, we have had various meetings with various agencies, attorneys for the districts, the district commissioners, Mr. Clark, various individuals, in which all these documents were gone over thoroughly by everyone involved.

Those papers we have been unable to find.

Mr. WISE. Is that subsequent to the GAO being—performing their investigation?

Mr. DOWNEY. Yes, sir.

Mr. WISE. If you have found them, would you submit them to the subcommittee?

Mr. DOWNEY. Absolutely.

Mr. WISE. Do you have them today to submit?

Mr. **Downey**. I do not. We are still trying to find them. We fear that someone in one of those meetings may have picked up those papers by mistake.

Mr. **Wise**. So you found them and now they are lost again?

Mr. **Downey**. We have not found them at all.

[The following was submitted for the record:]

The worksheets referred to in the questioning by Representative Wise that cannot be found are personal worksheets prepared by Mr. Downey and are not formatted worksheets that must be prepared or submitted to any person or agency for the project. The work sheets are simply Mr. Downey's personal calculations for preparing the transfer worksheet that is submitted to the bank each month. These transfer worksheets are not missing and were given to the GAO investigators during their investigations.

Mr. **Wise**. The GAO requested them and I think they were around in—was it October?

Mr. **Downey**. No, sir. They were here after. It was more like January or February.

Mr. **Wise**. At that time you didn't have them?

Mr. **Downey**. That is true.

Mr. **Wise**. Have they been found since that time?

Mr. **Downey**. No, sir.

Mr. **Wise**. So they are still missing?

Mr. **Downey**. Yes, sir.

Mr. **Wise**. We were talking—I believe you referenced October as when the deficit became apparent. The GAO indicates that their analysis showed that the $12.8 million balancing was not met in May 1983. I think Commissioner Stump or Mr. Clark indicated that at least months earlier that was the case.

Why wouldn't you have picked that up?

Mr. **Downey**. Do you mind if I go back at the very beginning of the work sheet drama and try to bring you forward on that?

Mr. **Wise**. Please explain it.

Mr. **Downey**. In March 1982, the district issued their construction note issue which was a combination of BAN's and GAN's which I am sure you understand.

Mr. **Wise**. Not completely, sir.

Mr. **Downey**. Maybe no one does completely. The concept of BAN's and GAN's was issued as a one construction note issue. Construction began on the project in May 1982 and at the end of May, the District made its first expenditure from those various accounts set up at KB&T to pay the contractors, various professionals that they had employed to do services for them.

As part of the construction note resolution, we were directed by the district to certify to the bank which account expenditures were to be made from. This was a simple review of the invoices that had been approved by the district to determine if those expenditures were eligible for reimbursement by EPA grant funds or if they were not eligible for reimbursement.

Corresponding accounts had been set up at KB&T to draw from. Those two accounts were called the eligible cost account and the noneligible cost account.

So our charge in that was to certify which account those expenditures were to be drawn from. In January 1983, we were advised by KB&T that there were additional forms that they were not aware of, we had not been aware of, that had to be filled out. These forms were only found necessary through the bank's auditors that they had come in to audit their books.

Their auditors discovered that according to the construction note resolution that the bank was supposed to be receiving these transfer work sheets, which is what we were talking about earlier, as well as the certification from the district cosigned by the consulting engineer stating that there were additional funds coming from EPA to cover the $12,800,000 that would have to be repaid to the note holders.

No one knew that those documents were necessary until January 1983, so therefore, none were filled out until beginning on that date. We had not received any of those forms prior to that.

The district's bond council, Jackson, Kelley, Holt & O'Farrell sent us a package which included the forms that were necessary to send to KB&T.

I talked to an attorney at Jackson, Kelley, Holt & O'Farrell to find out how to fill out the form and proceed each month to fill out the form in the manner that I was instructed to do.

In October the formula on the work sheet would not give the result that was necessary to make the withdrawal from the bank. None of the documentation that we had at that time had alluded to the fact that there was a deficit coming, for the coming or even anywhere close to being a deficit situation for the project.

However, in October, the formula would not work so I called in the project's accountant, we went over it. He advised me that he felt that the formula was a faulty formula and also that there was another method to work the formula other than the way that I had worked it.

To verify that, he contacted Jackson, Kelley, Holt & O'Farrell who gave him a third and fourth method of working that formula; each method giving you a different answer. Had you used the accountant's method, I think it would be in agreement with the GAO testimony that possibly in May the project did go into default at that time.

However, based on the method I used, it didn't show up until October.

Mr. Wise. During this time, were you or Mr. Blair aware that the local cost share was increasing?

Mr. Downey. Yes, sir. We were aware from the accountant's monthly reports to the district that some of the line items in the budget had exceeded their budgeted amounts.

Mr. Wise. And at the same time weren't there, as has been testified to, the legal fees were going up way over the budget, the land acquisition, there was a change order that had been submitted—was that brought to anybody's attention?

Mr. Downey. Those items were on the budget report each month that was submitted by the accountant to the district. That was—see, the budget report was submitted directly to the district by the accountant.

We received it after the fact.

Mr. Wise. Well, the budget report—but I thought that and the district has stated that you gave them the figures necessary for them to approve, Mr. Hafer signing the certification.

Mr. DOWNEY. Each month we approved periodic estimates submitted to us by the contractor and certified those as the work being in compliance with the specification and we approved what the contractor was requesting for payment.

All other invoices were submitted directly to the district and did not come through us, so the only numbers that we had prior to any meeting with the district pertained to the construction numbers only for that month.

Mr. WISE. But given the changes that are going on, increases in costs in certain areas, did it occur to you that the minimum balance at the bank might be being overdrawn or that there might be an oncoming deficit, indeed, that the project might be in a deficit?

Mr. DOWNEY. Not at that point, because we were not aware of the misstatement of the capitalized interest figure.

Mr. WISE. Did the accountant work with you each month in preparing this certification?

Mr. DOWNEY. No, sir.

Mr. WISE. Did you hear——

Mr. DOWNEY. Could I add to that?

Mr. WISE. Yes.

Mr. DOWNEY. He was sent a copy of our work sheet each month.

Mr. WISE. But who actually—Mr. Evans or Mr. Jarret, if you care to jump in—what we are trying to get at is when could there have been timely notice that there was a deficit? Let me ask another question.

The GAO testified that any time that the local share figure went above $4.6 million, that ought to raise a red flag. There were at least 2 months I know of—let's agree there were several months where it was above the 4.6, even getting into the $10 million range. Did that not cause you concern?

Mr. DOWNEY. Of course, we were interviewed by GAO when they came in for their investigation. We discussed that matter with them. It didn't raise a flag to me because the definition of local share in the offering statement is so much different than what our concept of local share is that the correlation between the two is not there based on the definition.

It doesn't really say that the local share is what the dsistrict will have to come up with to pay off the notes with the money left over at the end of the job. There is a lot of gobbledygook in there that didn't come down to really saying that, and therefore it didn't raise a flag.

Mr. WISE. Mr. Downey, given your professional experience, did you have any indication that the amount was increasing? I guess particularly given your experience and the fact that there were some local share costs steadily rising—I have to come back to that question of didn't that raise any concern with you?

Mr. DOWNEY. Yes, sir. Of course it raised a concern. However, we felt that the funds were available according to the cash flow that had been supplied by the investment banker.

It showed that there would be a surplus at the end of the project of approximately $700,000, which would cover the overruns.

Mr. WISE. Whose cash flow was that?

Mr. DOWNEY. That was the cash flow prepared by Baker, Watts & Co.

Mr. **Wise**. Mr. Downey, in addition to the request I just made of submitting, responding to written questions, would you submit for the subcommittee a detailed list of eligible and ineligible cost items with amounts to the subcommittee, two stages really, one when the project was initially bid and one as of today?

Mr. **Downey**. All costs? Are you requesting all costs or construction costs only?

Mr. **Wise**. All costs.

Mr. **Downey**. Yes, sir. Be happy to.

[The information received from Mr. Downey follows:]

KELLEY, GIDLEY, BLAIR & WOLFE, INC.
CONSULTING ENGINEERS
550 EAGAN STREET
CHARLESTON, WEST VIRGINIA 25301
(304) 345-0470

June 6, 1984

The Honorable Elliot H. Levitas, Chairman
Subcommittee on Investigations and Oversight
Committee on Public Works and Transportation
U.S. House of Representatives
Room 2165
Rayburn House Office Building
Washington, D.C. 20515

Re: Elk-Pinch PSD

Dear Mr. Levitas:

As requested in the Sub-committee hearings on the above referenced project, attached please find one (1) copy of the expenditure listings for the eligible and non-eligible costs accounts.

Sincerely,

KELLEY, GIDLEY, BLAIR & WOLFE, INC.

James Downey
James Downey
Vice President

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REC'D JUN 11 1984
Subcommittee on Investigations
and Oversight
Committee on Public Works
and Transportation

ELK-PINCH PUBLIC SERVICE DISTRICT

SUMMARY OF STEP III ELIGIBLE PROJECT EXPENDITURES

Requisition #	Payee	Amount	Classification of Exp.
1	KGBW	$39,726.95	Basic Eng. & Stakeout
2	Carson Insurance Agency	2,800.00	DOH Street Opening Bond
3	Midwest Video Co.	3,488.79	Video Taping/Construction Areas
4	Elk Valley Messenger	100.00	Public Hearing Advertisement
5	Charleston Newspaper	470.78	Ad for Bids-Cont. 11
6	Charleston Newspaper	410.86	Ad for Bids-Cont. 12
7	Charleston Newspaper	444.72	Ad for Bids-Cont. 6
8	KGBW	108,718.12	Design of Package Sewage Treatment Plant
9	KGBW	4,516.27	Basic Eng. During Construction
10	WV Dept. of Highways	49,348.80	DOH Inspection Fee
11	Charleston Newspaper	96.90	Ad for Project Coordinator
12	Midwest Video Co.	5,036.36	Video Taping
13	KGBW	17,743.95	Basic Eng.
14	KGBW	25,269.19	Basic Eng.
15	Lisbon Contractors, Inc.	62,656.35	Construction (Cont. 3)
16	Lisbon Contractors, Inc.	42,415.25	Construction (Cont. 4)
17	Rover Construction, Inc.	100,034.09	Construction (Cont. 5)
18	Valley Development of WV, Inc.	18,328.25	Construction (Cont. 7)
19	KGBW	58,125.55	Basic Eng. & Inspection
20	Krisher & Krisher	880.10	Accounting Serv. for Project
21	Midwest Video Co.	10,192.13	Video Taping
22	G.E. Ray Construction Co.	123,351.35	Sewer Construction (Cont. 1)
23	Lisbon Contractors, Inc.	46,247.85	Sewer Construction (Cont. 2)
24	Lisbon Contractors, Inc.	199,592.38	Sewer Construction (Cont. 3)
25	Lisbon Contractors, Inc.	204,868.81	Sewer Construction (Cont. 4)
26	Rover Construction, Inc.	48,557.42	Sewer Construction (Cont. 5)
27	Valley Development of WV, Inc.	124,416.07	Sewer Construction (Cont. 7)
28	G.E. Ray Construction Co.	28,726.89	Sewer Construction (Cont. 10)
29	Lisbon Contractors, Inc.	101,456.51	Sewer Construction (Cont. 4)
30	Lisbon Contractors, Inc.	46,511.07	Sewer Construction (Cont. 2)
31	Lisbon Contractors, Inc.	256,577.36	Sewer Construction (Cont. 3)
32	Rover Construction, Inc.	8,941.56	Sewer Construction (Cont. 5)
33	Valley Development of WV, Inc.	157,965.76	Sewer Construction (Cont. 7)
34	Joe & John Alvarez Contractors	38,955.58	Sewer Construction (Cont. 9)
35	G.E. Ray Construction Co.	61,870.47	Sewer Construction (Cont. 10)
36	G.E. Ray Construction Co.	108,488.87	Sewer Construction (Cont. 1)
37	Midwest Video Co.	9,287.54	Video Taping
38	Charles Strickland	2,091.65	Project Coordinator Salary
39	Charles Strickland	74.20	Proj. Coord. Exp. (Mileage)
40	C&P Telephone Co. of WV	160.03	Telephone for Proj. Coordinator
41	KGBW	808.98	Newsletter/Fact Sheet
42	KGBW	118,386.18	Basic Eng/Inspection
43	Lisbon Contractors, Inc.	109,839.90	Construction (Cont. 4)/Per.Est. 4
44	Lisbon Contractors, Inc.	118,559.90	Construction (Cont. 3)/Per.Est. 4
45	Rover Construction, Inc.	64,745.80	Construction (Cont. 5)/Per.Est. 4
46	Midwest Video Co.	5,037.66	Video Taping Work
47	Charles Strickland	1,586.00	Project Coordinator
48	KGBW	91,665.92	Basic Eng/Inspection

Requisition #	Payee	Amount	Classification of Exp.
49	Joe & John Alvarez Contractors	77,335.95	Construction (Cont. 9)/Per.Est. 2
50	Valley Development of WV	254,356.67	Construction (Cont. 7)/Per.Est. 4
51	G.E. Ray Construction Co.	46,865.22	Construction (Cont. 8)/Per. Est. 1
52	G.E. Ray Construction Co.	174,419.28	Construction (Cont. 10/Per. Est. 3
53	G.E. Ray Construction Co.	106,980.01	Construction (Cont. 1/Per. Est. 3
54	Lisbon Contractors, Inc.	33,662.60	Construction (Cont. 2)/Per.Est. 3
55	Lisbon Contractors, Inc.	105,876.26	Construction (Cont. 4)/Per.Est. 5
56	Lisbon Contractors, Inc.	198,532.30	Construction (Cont. 3)/Per.Est. 5
57	Lisbon Contractors, Inc.	166,340.32	Construction (Cont. 2)/Per.Est. 4
58	G.E. Ray Construction Co.	163,522.39	Construction (Cont. 10/Per. Est. 4
59	Joe & John Alvarez Contractors	132,223.09	Construction (Cont. 9)/Per.Est. 4
60	G.E. Ray Construction Co.	93,477.06	Construction (Cont. 8/Per. Est. 2
61	Valley Development of WV	188,009.67	Construction (Cont. 7)/Per.Est. 5
62	Valley Development of WV	23,304.74	Construction (Cont. 6)/Per.Est. 1
63	Rover Construction, Inc.	79,002.08	Construction (Cont. 5)/Per.Est. 5
64	G.E. Ray Construction Co.	154,389.64	Construction (Cont. 1/Per. Est. 4
65	C&P Telephone	54.69	Telephone Service
66	Midwest Video Co.	4,023.80	Video Taping
67	Krisher & Krisher	1,044.40	Consultation Service
68	Internal Revenue Service	1,388.30	Taxes
69	KGBW	102,736.47	Basic Eng/Inspection
70	Charles Strickland	1,921.71	Project Coordinator
71	Charles Strickland	47.00	Expenses
72	Charles Strickland	1,097.72	Project Coordinator
73	Carol Young	372.06	Secretary
74	C&P Telephone	62.59	Telephone Expenses
75	O.V. Smith & Sons Inc.	350.00	Office Rent
76	Lisbon Contractors, Inc.	1,734.30	Compaction Tests
77	KGBW	99,554.24	Engineering Services
78	G.E. Ray Construction Co.	89,126.53	Construction (Cont. 1/Per. Est. 5
79	Lisbon Contractors, Inc.	144,427.37	Construction (Cont. 2)/Per.Est. 5
80	Lisbon Contractors, Inc.	11,015.65	Construction (Cont. 3)/Per.Est. 6
81	Lisbon Contractors, Inc.	38,843.97	Construction (Cont. 4)/Per.Est. 6
82	Rover Construction, Inc.	151,829.76	Construction (Cont. 5)/Per.Est. 6
83	Valley Development of WV	38,955.37	Construction (Cont. 6)/Per.Est. 2
84	Valley Development of WV	212,044.81	Construction (Cont. 7)/Per.Est. 6
85	G.E. Ray Construction Co.	80,943.75	Construction (Cont. 8)/Per.Est. 3
86	Joe & John Alvarez Contractors	119,204.77	Construction (Cont. 9)/Per.Est. 4
87	G.E. Ray Construction Co.	189,272.49	Construction (Cont. 10)/Per.Est. 5
88	Hayslett Construction	98,745.46	Lift Station (Cont.11)/Per.Est.1
89	KGBW	101,019.32	Engineering Services
90	G.E. Ray Construction Co.	54,844.91	Construction (Cont. 1)/Per.Est. 6
91	Lisbon Contractors, Inc.	237,526.99	Construction (Cont. 2)/Per.Est. 6
92	Lisbon Contractors, Inc.	9,949.44	Construction (Cont. 3)/Per.Est. 7
93	Rover Construction, Inc.	50,503.07	Construction (Cont. 5)/Per.Est. 7
94	Valley Development of WV	123,292.45	Construction (Cont. 6)/Per.Est. 3
95	Valley Development of WV	55,880.51	Construction (Cont. 7)/Per.Est. 7
96	G.E. Ray Construction Co.	111,968.93	Construction (Cont. 8)/Per.Est. 4
97	Joe & John Alvarez Contractors	43,122.65	Construction (Cont. 9)/Per.Est. 5

Requisition #	Payee	Amount	Classification of Exp.
98	G.E. Ray Construction Co.	158,598.08	Construction (Cont. 10)/Per.Est. 6
99	Hayslett Construction	254,497.53	Lift Station Construction
100	Lisbon Contractors	1,198.30	Compaction - H.C.Nutting Co.
101	C&P Telephone	56.23	Telephone Service
102	Carol Young	337.30	Secretary
103	Charles Strickland	824.26	Project Coordinator
104	Charles Strickland	33.40	Travel Expenses
105	KGBW	94,186.90	Engineering Expenses
106	G.E. Ray Construction Co.	58,262.28	Construction (Cont. 1)/Per.Est. 7
107	Lisbon Contractors, Inc.	112,634.98	Construction (Cont. 2)/Per.Est. 7
108	Lisbon Contractors, Inc.	2,324.54	Construction (Cont. 3)/Per.Est. 8
109	Lisbon Contractors, Inc.	5,334.60	Construction (Cont. 4)/Per.Est. 8
110	Rover Construction, Inc.	50,435.69	Construction (Cont. 5)/Per.Est. 8
111	Valley Development of WV	97,660.94	Construction (Cont. 6)/Per.Est. 4
112	Valley Development of WV	16,266.40	Construction (Cont. 7)/Per.Est. 8
113	G.E. Ray Construction Co.	75,940.80	Construction (Cont. 8)/Per.Est. 5
114	Joe & John Alvarez Contractors	56,806.99	Construction (Cont. 9)/Per.Est. 6
115	G.E. Ray Construction Co.	207,065.64	Construction (Cont. 10)/Per.Est. 7
116	Hayslett Construction	252,979.46	Lift Station (Cont.2)/Per.Est.3
117	KGBW	1,295.91	Record Drawings
118	C&P Telephone	58.88	Telephone Service
119	Kanawha Gardens, Inc.	704.00	Remove Tank and Fill Hole
120	Appalachian Power Inc.	9,325.00	Electrical Serv. for Lift Station
121	Charles Strickland	1,836.74	Project Coordinator
122	Charles Strickland	117.61	Expenses
123	Carol Young	520.87	Secretary
124	KGBW	75,723.58	Engineering Services, Inv. #17-81400
125	KGBW	2,493.39	Record Drawings, Invoice #5-98100
126	Rover Construction, Inc.	25,494.19	Construction (Cont. 5)/Per.Est. 9
127	Valley Development of WV	98,348.78	Construction (Cont. 6)/Per.Est. 5
128	G.E. Ray Construction Co.	34,870.67	Construction (Cont. 8)/Per.Est. 6
129	Joe & John Alvarez Contractors	18,751.69	Construction (Cont. 9)/Per.Est. 7
130	G.E. Ray Construction Co.	66,588.99	Construction (Cont. 10)/Per.Est. 8
131	Hayslett Construction	197,080.39	Lift Station (Cont.11)/Per.Est.4
132	C&P Telephone	56.12	Telephone Service
133	Appalachian Power Inc.	5,535.00	Electrical Services
134	Krisher & Krisher	2,084.25	Accounting Services
135	Midwest Video Co.	292.64	Video Taping
136	Charles Strickland	1,526.51	Project Coordinator
137	Charles Strickland	131.22	Expenses
138	Carol Young	337.30	Secretarial
139	KGBW	309.09	O&M Manual Invoice #1-97200
140	KGBW	4,087.06	Record Drawings, Invoice #6-98100
141	KGBW	82,982.38	Eng. Services Inv. #18-81400
142	G.E. Ray Construction Co.	3,057.55	Construction (Cont. 1)/Per.Est. 8
143	Rover Construction, Inc.	3,489.98	Construction (Cont. 5)/Per.Est. 10
144	Valley Development of WV	12,641.58	Construction (Cont. 6)/Per.Est. 6
145	G.E. Ray Construction Co.	67,722.70	Construction (Cont. 8)/Per.Est. 7
146	Joe & John Alvarez Contractors	60,473.83	Construction (Cont. 9)/Per.Est. 8

Requisition #	Payee	Amount	Classification of Exp.
147	G.E. Ray Construction Co.	64,617.70	Construction (Cont. 10)/Per.Est. 9
148	Hayslett Construction	293,991.94	Lift Station (Cont.11)/Per.Est.5
149	Appalachian Power Co.	4,176.00	Supply Power to Lift Station
150	WV Dept. of Employment Security	36.08	Quarterly Contribution
151	WV Dept. of Employment Security	345.80	Quarterly Contribution
152	WV Dept. of Employment Security	106.52	Quarterly Contribution
153	State of WV Tax Dept.	250.91	Taxes
154	Dept. of Treasury IRS	186.01	Taxes
155	Dept. of Treasury IRS	31.80	Taxes
156	Dept. of Treasury IRS	31.20	Taxes
157	O.V. Smith & Sons, Inc.	350.00	Office Rent
158	C&P Telephone	64.18	Phone Service
159	Dept. of Treasury IRS	634.89	Taxes
160	Dept. of Treasury IRS	845.31	Taxes
161	Charles Strickland	1,450.13	Project Coordinator
162	Charles Strickland	103.50	Expenses
163	Carol Young	537.40	Secretarial
164	KGBW	2,320.61	O&M Manual Invoice #7-98100
165	KGBW	45,745.19	Eng. Services Inv. #19-81400
166	Valley Development of WV	55,077.35	Construction (Cont. 6)/Per.Est. 7
167	Joe & John Alvarez Contractors	13,971.15	Construction (Cont. 9)/Per.Est. 9
168	G.E. Ray Construction Co.	130,732.84	Construction (Cont. 10)/Per.Est. 10
169	Hayslett Construction	71,484.74	Lift Station (Cont.11)/Per.Est.6
170	Mosser Construction Inc.	22,500.00	Sewer Treatment Const. (Cont.12)/Per.Est.1
171	WV Workmen's Comp. Fund	327.02	Contribution
172	WV Workmen's Comp. Fund	166.99	Contribution
173	Charles Strickland	1,495.92	Project Coordinator
174	C&P Telephone	67.20	Phone Services
175	Charles Strickland	169.79	Expenses
176	Carol Young	662.93	Secretarial
177	WV Dept. of Natural Resources	51.00	Permit for Plant Construction
178	Wheeling Dollar Bank	624.19	Withholding Taxes
179	Kanawha Co. Bd. of Education	30.00	Rental EJHS
180	KGBW	709.86	Record Drawings, Invoice #8-98100
181	KGBW	64,356.00	Eng. Services Inv. #20-81400)
182	Lisbon Contractors, Inc.	40,552.05	Construction (Cont. 2)/Per.Est. 8
183	Lisbon Contractors, Inc.	33,684.50	Construction (Cont. 4)/Per.Est. 9
184	Rover Construction, Inc.	6,460.00	Construction (Cont. 5)/Per.Est. 11
185	Valley Development of WV	80,136.89	Construction (Cont. 6)/Per.Est. 8
186	G.E. Ray Construction Co.	57,698.62	Construction (Cont. 8)/Per.Est. 8
187	G.E. Ray Construction Co.	59,967.72	Construction (Cont. 10)/Per.Est. 11
188	Mosser Construction	23,400.00	Treatment Plant Const. (Cont. 12) Per.Est. #2
189	O.V. Smith & Sons, Inc.	350.00	Office Rent
190	C&P Telephone	82.34	Phone Service
191	Carson Insurance Agency	2,800.00	Bond-State of WV
192	State Tax Dept.	218.12	Administration
193	WV Workmen's Comp. Fund	146.65	Administration

Requisition #	Payee	Amount	Classification of Exp.
194	Employment Security Dept.	309.38	Administration
195	State Auditors Office-S.S.	3,715.46	Administration
196	Charles Strickland	1,726.64	Project Coordinator
197	Charles Strickland	166.73	Expenses
198	Carol Young	571.70	Secretarial
199	Lisbon Contractors, Inc.	53,357.75	Construction (Cont. 2)/Per.Est. 9
200	Lisbon Contractors, Inc.	214,791.01	Cont. 2, Per. Est. #9 Paving
201	Lisbon Contractors, Inc.	198,180.15	Cont. 3, Per. Est. #10 Paving
202	Lisbon Contractors, Inc.	65,279.25	Construction (Cont. 3)/Per.Est.10
203	Lisbon Contractors, Inc.	85,181.75	Paving - Cont. 4, Per. Est. #10
204	Lisbon Contractors, Inc.	83,665.55	Construction (Cont. 4)/Per.Est.10
205	Valley Development of WV	175,326.60	Construction (Cont. 6)/Per.Est. 9
206	G.E. Ray Construction Co.	75,883.08	Construction (Cont. 8)/Per.Est. 9
207	G.E. Ray Construction Co.	39,221.78	Construction (Cont. 10)/Per.Est.12
208	Mosser Construction	76,808.45	Plant Const. (Cont. 12) Per.Est. #3
209	KGBW	70,506.74	Eng. Services Inv. #21-81400
210	KGBW	989.67	Record Drawings, Invoice #9-98100
211	Krisher & Krisher	2,392.15	Accounting Services/Administration
212	Charles Strickland	1,518.11	Project Coordinator
213	Charles Strickland	128.10	Expenses
214	Carol Young	536.86	Secretarial
215	State Auditors Office, Soc.Sec.	436.01	Contribution
216	State Auditors Office, Soc.Sec.	366.23	Contribution
217	Lisbon Contractors	78,623.80	Sewer Construction
218	KGBW	73,422.05	Eng. Services Inv. #22-81400
219	KGBW	2,857.04	Record Drawing Inv. #10-98100
220	Lisbon Contractors, Inc.	23,829.50	Construction Cont. 2, Per. Est. #10
221	Lisbon Contractors, Inc.	152,409.17	Construction Cont. 3, Per. Est. #11
222	Lisbon Contractors, Inc.	48,365.45	Construction Cont. 4, Per. Est. #11
223	Valley Development of WV	96,285.55	Construction (Cont. 6)/Per.Est. 9
224	G.E. Ray Construction Co.	84,914.44	Construction (Cont. 8)/Per.Est. 10
225	Joe & John Alvarez Contractors	9,492.88	Construction (Cont. 9)/Per.Est.10
226	G.E. Ray Construction Co.	6,133.38	Construction (Cont. 10)/Per.Est. 13
227	Hayslett Construction	12,846.13	Lift Station (Cont.11)/Per.Est.7
228	Mosser Construction Inc.	67,592.26	Plant Construction (Cont.12)/Per.Est.4
229	O.V. Smith & Sons	350.00	Office Rent
230	Charleston Newspapers	340.00	Sewer Use Ordinance Meeting
231	Krisher & Krisher	563.38	Accounting Services
232	C&P Telephone	47.52	Telephone Service
233	Carol Young	672.47	Secretarial
234	Charles Strickland	1,783.51	Project Coordinator
235	Charles Strickland	161.16	Expenses
236	Social Security Fund	457.78	Contribution
237	IRS	587.11	Contribution
238	WV Dept. of Employment Security	142.95	Administration
239	WV Workmen's Compensation	199.50	Administration
240	WV State Tax Dept.	287.14	Administration
241	KGBW	102,261.13	Engineering, Invoice #23-81400
242	KGBW	301.97	Record Drawing Invoice #11-98100

Requisition #	Payee	Amount	Classification of Exp.
243	G.E. Ray Construction Co.	15,121.80	Construction (Cont. 1)/Per.Est. 9
244	Rover Construction, Inc.	20,604.16	Construction (Cont. 5)/Per.Est. 12
245	Valley Development of WV	126,636.45	Construction (Cont. 6)/Per.Est.10
246	G.E. Ray Construction Co.	73,948.68	Construction (Cont. 8)/Per.Est.11
247	Joe & John Alvarez Contractors	52,443.65	Construction (Cont. 9)/Per.Est.11
248	G.E. Ray Construction Co.	90,138.92	Construction (Cont. 10)/Per.Est.14
249	Hayslett Construction	419,417.46	Lift Station (Cont.11)/Per.Est.8
250	Mosser Construction	237,050.38	Sewer Plant Const.(Cont.12)Per.Est.#5
251	The Chapman Printing Co.	37.81	Office Supplies
252	Soc.SecurityFund c/o C.Strickland	436.00	Employee Contribution
253	IRS	483.60	Tax
254	Charles Strickland	1,869.11	Project Coordinator
255	Carol Young	572.57	Secretary
256	Charles Strickland	79.50	Expense/Mileage
257	C&P Telephone Co.	67.75	Phone Service
258	Charleston Newspaper	178.36	Ad for Class 2 Wastewater Operator
259	Rover Construction	9,642.95	Construction (Cont. 5) Per.Est. #13
260	Valley Development of WV	98,880.30	Construction (Cont. 6) Per. Est. #2
261	G.E. Ray Construction Co.	56,293.83	Construction (Cont. 8)/Per.Est. #12
262	G.E. Ray Construction Co.	89,805.68	Construction (Cont.10)/Revised Per.Est. #15
263	Mosser Construction	203,694.91	Plant Const.(Cont.12)Per.Est.#6
264	Triad Engineering Consult.	143.00	Compression Tests - Concrete
265	Krisher & Krisher	2,062.75	Accounting Services
266	C&P Telephone	58.42	Telephone Services
267	Charleston Newspaper	437.50	Advertising
268	Appalachian Power	13.97	Power for Dutch Rd. Lift Sta.
269	Appalachian Power	14.52	Power for Millikin Lift Sta.
270	Appalachian Power	15.78	Power for Wingfield Lift Sta.
271	Appalachian Power	7.41	Power for Brynwood Rd. Lift Sta.
272	IRS	366.50	Withholding Tax
273	Social Security	388.00	S.S. Withholding
274	Charles Strickland	1,474.97	Project Coordinator
275	Charles Strickland	118.09	Expenses
276	Lee Ann Strickland	264.65	Clerical
277	Carol Young	666.58	Secretary
278	James Engineering	3,492.00	
279	EPPSD	781.74	Plant Water Tap
280	Capitol City Industrial Supply	542.88	Lift Station Locks
282	KGBW	45,129.11	Eng. Services Inv. #25-81400
283	KGBW	208.94	O&M Manual - Invoice #2-97200
284	G.E. Ray Construction Co.	8,087.96	Construction (Cont. 1)/Per.Est.10
285	Valley Development of WV	158,780.91	Construction (Cont. 6)/Per.Est.12
287	Valley Development of WV	10,632.96	Construction (Cont. 7)/Per.Est.9
288	G.E. Ray Construction Co.	43,070.07	Construction (Cont. 8)/Per.Est.13
289	G.E. Ray Construction Co.	64,507.70	Construction (Cont.10)/Per.Est.16

Requisition #	Payee	Amount	Classification of Exp.
290	Hayslett Construction	126,948.94	Lift Station (Cont.11)/Per.Est.9
291	Mosser Construction	229,593.88	Sewer Plant Const.(Cont.12)Per.Est.#7
292	C&P Telephone	61.09	Phone Service
293	Triad Engineering Co.	65.00	Concrete Tests
294	Charles Strickland	1,869.11	Project Coordinator
295	Charles Strickland	178.20	Expenses
296	Carol Young	701.67	Secretary
297	Social Security Contribution Fund	457.78	Contribution
298	IRS	502.80	Contribution
299	WV State Tax Dept.	304.97	State Tax
300	Workmen's Comp. Fund	185.80	Workmen's Compensation
301	Dept. of Employment Security	84.14	Contribution
302	Krisher & Krisher	1,240.79	Accounting Services
303	Lisbon Contractors	159,212.08	Construction (Cont. 2)Per.Est.#13
304	Lisbon Contractors	158,899.57	Construction (Cont. 2)Per.Est.#14
305	Lisbon Contractors	43,751.15	Construction (Cont. 4)Per.Est.#14
306	C&P Telephone	70.07	Phone Services
307	Lynn Lock Service	40.00	Keys
308	Charles Strickland	200.49	Expenses
312	Appalachian Power	335.00	Industrial Underground Facility (Plant)
313	KGBW	37,514.84	Engineering Services
314	Mosser Construction	511,558.10	Plant Construction
315	Hayslett Construction	49,169.37	Lift Sta. Const. (Cont. 11.) Per.Est.10
316	G.E. Ray Construction	40,991.57	Construction (Cont. 10)Per.Est#17
317	G.E. Ray Construction	351.65	Construction (Cont. 8)Per.Est#14
318	Valley Development of WV	44,867.18	Construction (Cont. 7)Per.Est#10
319	Valley Development of WV	33,488.28	Construction (Cont. 6)Per.Est#13
320	Rover Construction	8,322.12	Construction (Cont. 5)Per.Est#14
322	Montgomery Construction Co.	637.00	Extend Basement Drain at McQueen L.S.
323	Triad Engineering Consultants	221.00	Concrete Cylinder Compression Tests

ELK-PINCH PUBLIC SERVICE DISTRICT

SUMMARY OF NON-ELIGIBLE COSTS ACCOUNT

Requisition #	Payee	Amount	Classification of Exp.
1	KGBW	$7,335.32	Right-of-way Engineering
2	Campbell Realty Co.	16,310.83	Right-of-way Acquisition
3	Dan's Rubber Stamp Service	81.70	Easement Deeds, Stapled 285 copies
4	Dan's Rubber Stamp Service	63.45	Easement Deeds, Stapled 250 copies
5	Campbell Realty Co.	30.85	Right-of-way Agreements
6	Campbell Realty Co.	15,309.30	Right-of-way Acquisition
7	KGBW	31,157.04	Redesign of RBC Plant
8	Borge & Pitt, Attorneys	14,102.13	Construction Note Tax Counsel
9	Charnock & White	5,638.50	Right-of-way and Legal Counsel
10	KGBW	2,933.36	Right-of-way Plats &R/W Surveying
11	Lisbon Contractors	310.00	6" Service Laterals (Cont.4)
12	KGBW	20,725.60	R/W Engineering
13	KGBW	12,398.98	R/W Engineering
14	Charleston Newspapers	132.24	Advertising - public meeting
15	Dan's Rubber Stamp Service	5.20	Rubber Stamp
16	Dan's Rubber Stamp Service	99.35	R/W Forms
17	Campbell Realty Co.	20,624.00	Right-of-way
18	Sky Courier	180.00	Construction Note Mailing
19	Packard Press	14,350.00	Printing of Official Statements
20	U.S. Bank Note Corporation	3,136.00	Printing of Construction Notes
21	John N. Charnock	160.00	Legal Counsel
22	Robert Fletcher	1,226.25	Title Search-Lift Station Sites (R/W)
23	Charnock & White	111.27	Legal Counsel
24	F.C. Gall	1,072.00	Legal Counsel for R/W
25	Thomas Riggs	1,387.50	Legal Counsel for R/W
26	Robert Lee White	3,707.50	Legal Counsel
27	Campbell Realty Co.	16,247.00	Right-of-Way Acquistion
28	C&P Telephone	203.00	Office Phone
29	Dan's Rubber Stamp Service	2.30	Rubber Stamp
30	McCamey Insurance Agency	77.00	Fidelity Bond
31	Service Office Supply & Printing	281.52	Office Furniture & Supplies
32	Dan's Rubber Stamp Service	29.70	Envelopes
33	Service Office Supply & Printing	63.87	Office Supplies
34	Service Office Supply & Printing	125.90	Office Furniture
35	Service Office Supply & Printing	12.23	Rubber Stamps
36	O.V. Smith & Sons	350.00	Office Rent
37	American National Bank	2,235.00	Legal Fee/Constr.Note Closing
38	Charnock & White	1,112.98	Legal Fee for R/W
39	Thomas S. Riggs	3,650.00	Legal Fee for R/W Acquisition
40	Louie A. Paterno	880.00	Legal Fee for R/W Acquisition
41	F. Christian Gall	1,770.00	Legal Fee for R/W Acquisition
42	Michael T. Clifford	1,320.00	Legal Fee for R/W Acquisition

Requisition #	Payee	Amount	Classification of Exp.
43	Louie Paterno	750.00	Legal Fee for R/W Acquisition
44	Thomas Riggs	3,460.00	Legal Fee for R/W Acquisition
45	F. Christian Gall	2,460.00	Legal Fee for R/W Acquisition
46	KGBW	18,846.84	Right-of-Way Engineering
47	G.E.Ray Construction Co.	2.932.50	6" House Laterals (Cont. 1)
48	Lisbon Contractors	19,230.00	6" House Laterals (Cont. 3)
49	Lisbon Contractors	17,350.00	6" House Laterals (Cont. 4)
50	Rover Construction	852.60	6" House Laterals (Cont. 5)
51	Valley Development of WV	13,889.00	6" House Laterals (Cont. 7)
52	Carol Young	806.98	Period 5/17 to 6/31/82
53	Service Office Supply Co.	798.04	Office Furniture & Supplies
54	KGBW	12,851.46	R/W Engineering
55	Thomas Riggs	5,475.00	Legal Counsel for R/W
56	John Charnock	486.20	Legal Counsel for R/W
57	Robert Fletcher	956.25	Legal Counsel for R/W
58	Campbell Realty Co.	18,232.00	R/W Agent
59	Elk-Pinch PSD	100.00	Postage Stamps
60	Carol Young	581.25	Payroll
61	Stephanie Young c/o Elk-Pinch PSD	134.00	Contract Secretarial Work
62	Dan's Rubber Stamp Service	8.40	Rubber Stamp
63	WV Tax Department	15.00	Application for Business Franchise
64	McCamey Insurance Agency	33.00	Insurance for Employees
65	C.R. Johnson	410.00	Typewriter
66	Walker Sign Co.	85.00	Elk-Pinch PSD Logo Decals
67	Dan's Rubber Stamp Service	58.90	Letterhead Stationery
68	Lisbon Contractors	10,050.00	6" House Laterals (Cont. 4)
69	Lisbon Contractors	5,150.00	6" House Laterals (Cont. 2)
70	Lisbon Contractors	33,240.00	6" House Laterals (Cont. 3)
71	Rover Construction	441.00	6" House Laterals (Cont. 5)
72	Valley Development of WV	14,974.30	6" House Laterals (Cont. 7)
73	G.E.Ray Construction Co.	795.50	6" House Laterals (Cont. 10)
74	G.E.Ray Construction Co.	8,483.00	6" House Laterals (Cont. 1)
75	Louie Paterno	780.00	Legal Counsel for R/W
76	F. Christian Gall	1,420.00	Legal Counsel for R/W
77	Michael T. Clifford	600.00	Legal Counsel for R/W
78	Elk-Pinch PSD	350.00	Office Rent
79	Stephen Chambers	1,036.00	Legal Services—Title Reports
80	Louie Paterno	290.00	Legal Services—Title Work
81	Thomas Riggs	3,905.00	Legal Services—Condemnation-Easement
82	Service Office Supply Co.	704.57	Office Supplies
83	C&P Telephone Co. of WV	58.82	Phone Service
84	IRS Center	205.40	Tax
85	Charnock & White	1,292.75	Legal Services-Title Report on Lift Station
86	Jackson, Kelly, Holt & O'Farrell	9,167.50	Legal Service
87	Lucia Taylor	150.00	Tap Fee Fund
88	John Lucas	150.00	Tap Fee Fund
89	Jones O. Taylor	150.00	Tap Fee Fund
90	Allen Cowas	150.00	Tap Fee Fund
91	Campbell Realty Co.	12,931.00	Right-of-Way Fee Lift Sta. Appraisal Court Testimony & Pre-trial

Requisition #	Payee	Amount	Classification of Exp.
92	Charles Strickland	35.52	Postage R/W Fees & Field Inspection
93	Carol Young	581.25	Secretarial
94	Kanawha County Court	80,000.00	Plant Site Deposit Condemnation
95	Arley Chapman	500.00	McQueen St. Lift Sta.-Payment for Property
96	KGBW	11,257.41	R/W Engineering
97	Lisbon Contractors	21,820.00	Construction Cont. 4/Per.Est.4
98	Lisbon Contractors	13,060.00	Construction Cont. 3/Per.Est.3
99	Rover Construction	1,293.60	Construction Cont. 5/Per.Est.4
100	Joe & John Alvarez Construct.	85.00	6" House Laterals (Cont. 9) Per.Est.2
101	Valley Development of WV	38,533.90	6" House Lateral (Cont. 7)/Per.Est.4
102	G.E.Ray Construction Co.	577.68	6" House Laterals (Cont. 8) P.E.#1
103	G.E.Ray Construction Co.	6,435.50	6" House Laterals (Cont. 10)P.E.#3
104	G.E.Ray Construction Co.	13,963.43	6" House Laterals (Cont. 1)P.E.#3
105	Charnock & White	3,174.65	Legal Services
106	Robert Fletcher	180.00	Legal Services-Dorothy Jarrett-Tract-Title
107	Lisbon Contractors	6,400.00	6" House Laterals (Cont. 2) P.E. #3
108	Lisbon Contractors	(7,090.00)	6" House Laterals (Cont. 4) P.E. #5
		Credit Carried Forward	
109	Lisbon Contractors	(1,718.50)	Sewer Const.6" House Laterals (Cont. 3) P.E. #5
		Credit Carried Forward	
110	Lisbon Contractors	10,520.00	Sewer Const.(Cont. 2) P.E. #4
111	G.E.Ray Construction	13,320.00	Sewer Const.(Cont.10) P.E. #4
112	Joe & John Alvarez Construct.	2,594.00	6" House Laterals (Cont. 9) Per.Est.3
113	G.E.Ray Construction Co.	5,670.52	6" House Laterals (Cont. 8)P.E.#2
114	Valley Development of WV	11,328.70	6" House Lateral (Cont. 7)/Per.Est.5
115	Valley Development of WV	90.00	Lateral Connections (Cont. 6) P.E. #1
116	Rover Construction	5,390.00	6" House Conn. (Cont. 5)P.E. #5
117	G.E. Ray Construction Co.	874.19	6" House Laterals (Cont. 1)P.E.#4
118	Service Office Supply	73.33	Office Supplies
119	C.R. Johnson Co.	7.70	2 Typewriter Ribbons
120	John's Lock & Key Service	58.00	Keys for Desk & File Cabinet
121	Robert Fletcher	1,406.25	Legal Services

Requisition #	Payee	Amount	Classification of Exp.
122	Charnock & White	2,057.50	Legal Services
123	Campbell Realty Co.	12,470.00	R/W Fee Lift Sta. Appraisal & Receipts
124	Thomas Riggs	3,950.00	Title Work
125	Janet Rayhill	150.00	Return of Tap Fee
126	Joseph Durst	150.00	Return of Tap Fee
127	Carol Young	581.25	Secretary
128	Charles Strickland	129.74	Expenses
129	Louie Paterno	630.00	Legal Fees
130	Stephen Chambers	1,080.00	Legal Fees
131	Michael Clifford	3,030.00	Legal Fees
132	Whitsell Myers	150.00	Return of Tap Fee
133	Mrs. Earl Mollohan	150.00	Return of Tap Fee
134	William Six	150.00	Return of Tap Fee
135	Phyllis Cole	1,000.00	Property for Crede Lift Sta.
136	KGBW	8,264.33	Rights-of-Way Plats
137	Linda Lou Litton	100.00	Property for Lift Station
138	Boyd Litton	100.00	Property for Lift Station
139	Ralph Moran	100.00	Property for Lift Station
140	Service Office Supply	107.38	Office Supplies
141	Campbell Realty Co.	7,665.00	Right-of-Ways Fees & Appraisals
142	IRS	24.82	Taxes
143	Orlan Carte	50.00	Commissioner's Fees
144	E.V. Grace	50.00	Commissioner's Fees
145	Joseph Stutler	150.00	Commissioner's Fees
146	William Wright	50.00	Commissioner's Fees
147	A.D. McCormick	50.00	Commissioner's Fees
148	Joyce Aaran	50.00	Commissioner's Fees
149	Dewey Kuhns	50.00	Commissioner's Fees
150	William Wallace	50.00	Commissioner's Fees
151	Harry Barr	50.00	Commissioner's Fees
152	John Charnock	413.05	Legal Services
153	Glen & Lola Hudson	10,000.00	Property for Lift Station
154	Belinda Buus	750.00	Property for Lift Station
155	Columbia Gas	100.00	Property for Lift Station
156	Peggy McKinney	1,000.00	Property for Lift Station
157	M.Ruth & Akert Daugherty	5,000.00	Property for Lift Station
158	Thomas Riggs	3,900.00	Legal Services
159	Louie Paterno	670.00	Legal Services
160	Phyllis Cole	650.00	Circuit Court
161	Charnock & White	1,560.45	Legal Service
162	Elk-Pinch PSD	430.00	Federal Withholding Tax
163	WV Workmen's Comp.	30.00	Workman's Comp.
164	Carol Young	304.46	Secretary
165	Charles Strickland	465.98	Project Coordinator
166	Charles Strickland	27.40	Expenses
167	KGBW	6,453.44	Rights-of-Way Plats
168	G.E. Ray Construction	10,005.00	6" House Lateral (Cont. 1) P.E.#5
169	Lisbon Contractors	5,260.00	6" House Lateral (Cont. 2) P.E.#5
170	Lisbon Contractors	14,531.50	6" House Lateral (Cont. 3) P.E.#6
171	Lisbon Contractors	7,385.00	6" House Lateral (Cont. 4) P.E.#6
172	Valley Development of WV	945.00	Sewer Construction (Cont. 6) P.E. #2

Requisition #	Payee	Amount	Classification of Exp.
173	G.E. Ray Construction	3,624.40	6" House Lateral (Cont. 8) P.E.#3
174	Joe & John Alvarez Construction	5,531.00	6" House Lateral (Cont. 9) P.E.#4
175	Rover Construction	3,355.10	6" House Lateral (Cont. 5) P.E.#6
176	Valley Development of WV	12,486.50	6" House Lateral (Cont. 7) P.E.#6
177	KGBW	4,082.60	Right-of-Way Plats
178	G.E. Ray Construction	25,481.42	6" House Lateral (Cont. 1) P.E.#6
179	Lisbon Contractors	46,155.00	6" House Lateral (Cont. 2) P.E.#6
179	Lisbon Contractors	2,960.00	6" House Lateral (Cont. 3) P.E.#7
180	Lisbon Contractors	2,600.61	6" House Lateral (Cont. 4) P.E.#7
181	Rover Construction	4,228.00	6" House Lateral (Cont. 5) P.E.#7
182	Valley Development of WV	11,329.60	6" House Lateral (Cont. 6) P.E.#3
183	Valley Development of WV	6,596.00	6" House Lateral (Cont. 7) P.E.#7
184	G.E. Ray Consruction	5,377.30	6" House Lateral (Cont. 8) P.E.#4
185	Joe & John Alvarez Construction	7,854.00	6" House Lateral (Cont. 9) P.E.#5
186	G.E. Ray Construction	3,431.75	6" House Lateral (Cont. 10) P.E.#6
187	C.D. Payne Excavating	350.00	Backhoe Rental
188	Cerrone & Vaughn, Inc.	10,406.12	Engr. Peer Review, Required by WDA
189	Dewey Kuhns	100.00	Commissioner's Fee
190	Orlan Carte	100.00	Commissioner's Fee
191			
192	Charles King	50.00	Commissioner's Fee
193	William Wright	50.00	Commissioner's Fee
194	Service Office Supply	38.77	Office Supply
195	Campbell Realty Co.	6,616.00	R/W Fees, receipts, appraisal & court testimony
196	National Bank of Commerce	900.00	Trustee Stone Estate
197	Robert Fletcher	90.00	Legal Service
198	John Charnock	1,766.00	Legal Service
199	Federal Express Corp.	30.50	Mail Service
200	Carol Young	234.40	Secretary
201	Charles Strickland	702.15	Project Coordinator
202	Charles Strickland	31.20	Travel Expense
203	Richard Newmen	150.00	Return of Tap Fee
204	Curtis Fields	150.00	Return of Tap Fee
205	C.E. Blackwell	150.00	Return of Tap Fee
206	Sam Burdette	150.00	Return of Tap Fee
207	Jerry Baldwin	150.00	Return of Tap Fee
208	Thomas Riggs	4,225.00	Legal Service
209	F. Christian Gall	780.00	Legal Service
210	Louie Paterno	430.00	Legal Service
211	Dorothy Jarrett	250.00	Condemnation Property for Lift Station
212	KGBW	4,960.89	Engineering Expense-R/W Plats
213	G.E. Ray Construction	1,765.13	6" House Lateral (Cont. 1) P.E.#7
214	Lisbon Contractors	16,915.00	6" House Lateral (Cont. 2) P.E.#7
215	Lisbon Contractors	1,190.00	6" House Lateral (Cont. 4) P.E.#8
216	Rover Construction	1,238.30	6" House Lateral (Cont. 5) P.E.#8
217	Valley Development of WV	12,224.60	6" House Lateral (Cont. 6) P.E.#4
218	Valley Development of WV	2,006.00	6" House Lateral (Cont. 7) P.E.#8
219	G.E. Ray Consruction	4,473.80	6" House Lateral (Cont. 8) P.E.#5
220	Joe & John Alvarez Construction	7,378.00	6" House Lateral (Cont. 9) P.E.#6

Requisition #	Payee	Amount	Classification of Exp.
221	G.E. Ray Construction	5,318.75	6" House Lateral (Cont. 10) P.E.#7
222	Dan's Rubber Stamp	23.35	Office Supplies
223	Robert Fletcher	540.00	Legal Service-Milliken Grinder Sta.
224	O.V. Smith & Sons	350.00	Field Office Rent
225	Campbell Realty Co.	8,050.00	Right-of-Way Fees & Appraisal
226	Service Office Supply & Print. Co.	172.24	Office Supplies
227	Clayton Honaker	50.00	Commissioner's Fee
228	Joyce Horan	100.00	Commissioner's Fee
229	Harry Barr	50.00	Commissioner's Fee
230	A.D. McCormick	100.00	Commissioner's Fee
231	Lewis Hatcher	100.00	Commissioner's Fee
232	Wm. L. Wallace	50.00	Commissioner's Fee
233	Dewey Kuhns	50.00	Commissioner's Fee
234	Joseph Stutler	50.00	Commissioner's Fee
235	W.E. Wright	50.00	Commissioner's Fee
236	Carol Young	155.59	Secretary
237	John Charnock	1,740.30	Legal Service
238	Thomas Riggs	3,900.00	Legal Service
239	Louie Paterno	400.00	Legal Service
240	F. Christian Gall	700.00	Legal Service
241	Michael Clifford	3,760.00	Legal Service
242	John Carter	150.00	Return of Tap Fee
243	Mabel Six	150.00	Return of Tap Fee
244	Bill Shaffer	300.00	Return of Tap Fee
245	Denzil Nickell	150.00	Return of Tap Fee
246	Dorothy Jarrett	100.00	Condemnation of Property
247	Patrick Schoonover	650.00	Condemnation of Property
248	Mrs. Charles Ruby	250.00	Condemnation of Property
249	Dept. of Treasury	606.00	Income & FICA Tax for Oct.,Nov.&Dec. 1981
250	KGBW	6,160.12	Right-of-Way Plats Invoice #17-81400
251	Rover Construction	1,117.20	6" House Laterals (Cont. 5) P.E. #9
252	Valley Development of WV	11,554.00	6" House Laterals (Cont. 6) P.E. #5
253	G.E. Ray Construction Co.	1,840.00	6" House Laterals (Cont. 8) P.E. #6
254	Joe & John Alvarez Contractors	544.00	6" House Laterals (Cont. 9) P.E. #7
255	G.E. Ray Construction Co.	341.50	6" House Laterals (Cont.10) P.E. #8
256	Dewey Kuhn	50.00	Comr's. Fee: Boggs Condemnation
257	Wm. E. Wright	50.00	Comr's. Fee: Boggs Condemnation
258	A.D. McCormick	50.00	Comr's. Fee: Boggs Condemnation
259	Joyce Horan	50.00	Comr's. fee: Hall Condemation
260	Orlan Carte	50.00	Comr's. fee: Hall Condemation
261	Clayton Honaker	50.00	Comr's. fee: Hall Condemation
262	Charles King	50.00	Comr's. fee: Hall Condemation

Requisition #	Payee	Amount	Classification of Exp.
263	William Wallace	50.00	Comr's. fee: Hall Condemation
264	Campbell Realty Co.	5,861.00	R/W Acquisition Appraisal/Pretrial & Court Appearance - Lift Station Acquisition
265	Thomas Riggs	3,575.00	Legal Service
266	F.C. Gall	1,216.00	Legal Service
267	Louie Paterno	630.00	Legal Service
268	Service Office Supply & Printing	50.58	Office Supplies
269	Robert Fletcher	843.75	Legal Service
270	Carol Young	234.40	Secretarial
271	John Charnock	1,583.40	Legal Service
272	KGBW	7,311.92	Rights-of-Way-Invoice #18-81400
273	G.E. Ray Construction Co.	1,552.13	6" House Laterals (Cont. 1) P.E. #8
274	Rover Construction	367.50	6" House Laterals (Cont. 5) P.E. #10
275	Joe & John Alvarez Contractors	684.00	6" House Laterals (Cont. 9) P.E. #8
276	G.E. Ray Construction Co.	2,353.50	6" House Laterals (Cont.10) P.E. #9
277	John Charnock	576.05	Legal Service
278	Arco Paul Sharp, Hazel Sharp Dennis Braglio	4,000.00	Property Condemnation for Lift Sta.
279	Kanawha Valley Regional Transportation Authority	120.00	Charter Bus Service to Co. Courthouse
280	Thomas Riggs	3,400.00	Legal Services
281	F. Christian Gall	1,020.00	Legal Services
282	Louie Paterno	880.00	Legal Services
283	John Charnock	2,846.55	Legal Services
284	Campbell Realty Co.	4,051.50	Appraisals
285	Service Office Supply & Printing Co.	76.89	Office Supplies
286	Commercial Insurance Service	1,310.00	Liability Insurance - Elk Pinch PSD Employees
287	Carol Young	34.30	Secretary
288	Charles Strickland	76.32	Project Coordinator
289	KGB&W	5,238.06	Rights-of-Way Plats—Invoice #19-81400
290	Valley Development of WV	321.20	6" House Laterals (Cont. 6) P.E.#7
291	G.E. Ray Construction Co.	1,267.55	6" House Laterals (Cont. 10) PE#10
292	Campbell Realty Co.	2,155.00	Rights-of-Way, Court Testimony & Appraisals
293	Charles Strickland	30.53	Project Coordinator
294	Carol Young	13.53	Secretary
295	Service Office Supply	43.96	Office Supply
296	Thomas Riggs	3,225.00	Legal Service
297	F. Christian Gall	880.00	Legal Service
298	Postmaster	100.00	Postage
299	John Charnock	1,448.65	Legal Service

Requisition #	Payee	Amount	Classification of Exp.
300	KGB&W	1,920.87	Rights-of-Way - Invoice #20-81400
301	Lisbon Contractors	17,150.00	6" Laterals (Cont.2) P.E. #8
302	Lisbon Contractors	2,688.49	6" Laterals (Cont. 3) P.E. #9
303	Lisbon/Contractors	6,010.00	6" Laterals (Cont. 4) P.E. #9
304	Valley Development of WV	7,402.20	6" Laterals (Cont. 6) P.E. #8
305	Campbell Realty Co.	7,062.00	Easements, Receipts, Appraisals, Lift Station and Court Testimony
306	Service Office Supply	289.62	Office Supply
307	Dan's Rubber Stamp Service	73.00	Office Supplies
308	Appalachian Power Co.	15.10	Office Expense
309	John Charnock	1,034.75	Legal Service
310	Louie Paterno	380.00	Legal Service
311	Thomas Riggs	3,175.00	Legal Service
312	Harry Barr	50.00	Commissioner's Fee-Land Hearings
313	Dewey Kuhns	50.00	Commissioner's Fee-Land Hearings
314	Thomas Michels	50.00	Commissioner's Fee-Land Hearings
315	William Wallace	50.00	Commissioner's Fee-Land Hearings
316	William Wright	50.00	Commissioner's Fee-Land Hearings
317	Charles King	50.00	Commissioner's Fee-Land Hearings
318	Joseph Stutler	50.00	Commissioner's Fee-Land Hearings
319	Joyce Horan	50.00	Commissioner's Fee-Land Hearings
320	Charles Strickland	110.20	Project Coordinator
321	Charles Strickland	10.65	Expenses
322	B.H. Lawrence	2,500.00	Purchase Property for Lift Sta.
323	Lisbon Contractors	11,514.00	6" Laterals (Cont. 2) P.E. #9
324	Lisbon Contractors	1,178.00	6" Laterals (Cont. 3) P.E. #10
325	Lisbon Contractors	1,045.00	6" Laterals (Cont. 4) P.E. #10
326	Valley Development of WV	12,687.00	6" Laterals (Cont. 6) P.E. #9
327	G.E. Ray Construction Co.	440.00	6" Laterals (Cont. 8) P.E. #9
328	KGBW	2,032.45	Rights-of-Way Invoice #21-81400
329	McCamey Insurance	162.00	Administration-Fidelity Bond
330	Service Office Supply	30.94	Office Supplies
331	Louie Paterno	180.00	Legal Services
332	Campbell Realty Co.	2,637.00	Easements, Receipts, Court Testimony & Appraisal-Administration
333	Thomas Riggs	3,275.00	Legal Service
334	Carol Young	34.27	Secretarial
334	KGBW	3,598.10	R.O.W. Invoice #22-81400
335	KB&T Co. N.A.	750.00	Annual Administration Fee—Period Ending 4/15/83
335	Lisbon Contractors	3,160.00	6" Laterals (Cont. 2) P.E. #10
336	Lisbon Contractors	16,680.00	6" Laterals (Cont. 3) P.E. #11
336	WV Dept. of Employment Security	15.78	Contribution
337	John Charnock	975.00	Legal Service
337	Lisbon Contractors	5,700.00	6" Laterals (Cont. 4) P.E. #11
338	C & P Telephone	82.34	Phone Service
338	Valley Construction of WV	18,389.00	6" Laterals (Cont. 6) P.E. #9
339	G.E. Ray Construction Co.	616.50	6" Laterals (Cont. 8) P.E.#10
340	G.E. Ray Construction Co.	54.14	6" Laterals (Cont.10) P.E.#13
341	Thomas Riggs	2,675.00	Legal Service
342	Orville Proctor	150.00	Return of Tap Fee
343	Appalachian Power Co.	32.18	Lift Sta. Power: Brynwood, Milliken, Dutch Rd. & Gen. Office

Requisition #	Payee	Amount	Classification of Exp.
344	O.V. Smith & Sons	7.65	Bulb
345	Phyllis Cole	5,000.00	Purchase of Property for L.S.-Flannagan
346	Campbell Realty Co.	2,955.00	9 R/W @ 85.00 each/1 appraisal @ 150.00/24 R/W & Court Settlement @ 85.00 each
347	Carol Young	250.00	Recording Secretary - 6 months
348	Charles Strickland	36.40	Project Coordinator
349	Harry Barr	100.00	Commissioner's Fee
350	Dewey Kuhn	100.00	Commissioner's Fee
351	A.D. McCormick	100.00	Commissioner's Fee
352	Wm. Wright	100.00	Commissioner's Fee
353	Charles King	100.00	Commissioner's Fee
354	Lewis Hatcher	150.00	Commissioner's Fee
355	Joyce Horan	100.00	Commissioner's Fee
356	Orlan Carte	50.00	Commissioner's Fee
357	Phyllis Jean Cole	932.00	Legal Service
358	KGBW	1,359.03	R.O.W. Invoice #23-81400
359	Valley Development of WV	18,658.88	6" Lateral Const.(Cont. 6) Per.Est.10
360	G.E. Ray Construction	23,999.30	6" Lateral Const.(Cont. 8) Per.Est.11
361	Joe & John Alvarez Contractors	3,113.00	6" Lateral Const.(Cont. 9) Per.Est.11
362	G.E. Ray Construction	13,940.39	6" Lateral Const.(Cont. 10) Per.Est.14
363	Thomas Riggs	3,352.50	Legal Service
364	Charles Strickland	73.96	Mileage Expense
365	Appalachian Power Co.	7.19	Power for Dutch Rd. L.S.
366	Appalachian Power Co.	7.19	Power for Brynwood Rd. L.S.
367	Appalachian Power Co.	7.19	Power for Milliken L. S.
368	Appalachian Power Co.	22.53	Power for Crede L. S.
369	Charleston Newspapers	340.00	Advertising
370	John Charnock	1,440.00	Legal Services
371	Campbell Realty Co.	3,030.00	Appraisals & Research
372	Valley Development of WV	6,453.20	6" Laterals (Cont. 6) P.E. #2
373	G.E. Ray Construction	4,742.78	6" Laterals (Cont. 8) P.E.#12
374	G.E. Ray Construction	3,094.88	6" Laterals (Cont.10-revised) P.E.#12
375	Campbell Realty Co.	680.00	Easements
378	Thomas Riggs	2,980.00	Legal Services
379	Chapman Printing	33.00	Dictating Cassettes
380	Charles Strickland	77.64	Project Coordinator
381	Charles Strickland	6.22	Expenses
382	Carol Young	35.09	Secretary
383	O.V. Smith	350.00	Office Rent (August)
384	Mr. Flannagen	2,000.00	Additional Lift Sta. Property
385	KGBW	1,051.22	Right-of-Way
386	KGBW	663.22	6" House Laterals Inv.#25-81400
387	Valley Development of WV	11,052.20	6" Laterals (Cont. 6) P.E. #12
388	Valley Development of WV	1,037.40	6" Laterals (Cont. 7) P.E. #9
389	G.E.Ray Construction	2,018.40	6" Laterals (Cont. 8) P.E. #13

Requisition #	Payee	Amount	Classification of Exp.
390	G.E.Ray Construction	602.12	6" Laterals (Cont.10) P.E. #16
391	John Charnock	2,786.00	Legal Service (August)
392	Appalachian Power Co.	11.98	Power for Crede L.S. 2-311-03-51890-09 August
393	Appalachian Power Co.	7.26	L.S. Power: Brynwood 2-311-04-61470-04 August
394	Appalachian Power Co.	7.26	L.S. Power: Milliken 2-311-02-54205-05 August
395	Appalachian Power Co.	21.27	L.S. Power: Wingfield Lane 2-311-02-59450-06 August
396	Chapman Printing Co.	55.25	Office Supplies
397	Campbell Realty Co.	770.00	Appraisals
398	W.W. and Gertrude Chambers	6,000.00	Lift Station Purchase-Sugar Camp
399	John S. & Ivy Cox	800.00	Purchase L.S.Property-Dutch Rd. #3
400	Ruth B. Strickland	56.95	Contract Labor
401	Appalachian Power Co.	23.48	Power for L.S.-Dutch Rd. 2-311-04-55560-07
402	Lisbon Contractors	1,228.00	6" House Laterals (Cont.2) P.E. #13
403	Lisbon Contractors	440.02	6" Laterals (Cont. 4) P.E. #14
404	Dennis Abrams (special counsel)	3,182.40	Legal Service
405	Thomas Riggs	5,387.50	Legal Service
406	O.V. Smith & Sons	350.00	Office Rent
407	Bambi Price c/o Chas. Newspapers	24.62	Notification of Meeting Time
408	Appalachian Power Co.	7.26	Power for L.S.-Milliken 2-311-02-54205-05
409	Appalachian Power Co.	14.52	Power for L.S.-Brynwood Rd. 2-311-04-61470-04
410	Appalachian Power Co.	12.28	Power for L.S.-Wingfield Lane 2-311-02-59450
411	Appalachian Power Co.	19.39	Power for L.S.-Dutch Rd. 2-311-04-55560-07
412	Appalachian Power Co.	13.75	Power for L.S.-Crede 2-311-03-51890-09
413	Margaret D. Miller	189.00	Recording Easements
414	John Charnock	2,077.35	Legal Services
415	KGBW	129.94	Rights-of-Way Invoice #26-81400
416	G.E. Ray Construction Co.	6,724.89	6" Laterals (Cont. 10) P.E. #17
417	G.E. Ray Construction Co.	4,323.60	6" Laterals (Cont. 8) P.E. #14
418	Valley Development of WV	329.30	6" Laterals (Cont. 7) P.E. #10
419	Valley Development of WV	7,431.40	6" Laterals (Cont. 6) P.E. #13
420	Rover Construction, Inc.	32.20	6" Laterals (Cont. 5) P.E. #14

CREDIT AGREEMENT COMMITTMENT
FEE ACCOUNT 76-007-30

Requisition #	Payee	Amount	Classification of Exp.
1	Mr. William P. Mulligan American National Bank & Trust Co.	35,486.11	Credit Agreement Fee
2	Kenneth Kentash Winter National Bank & Trust	43,750.00	Credit Agreement Fee

Mr. **Wise**. Mr. Evans.

Mr. **Evans**. As stated earlier, Mr. Chairman, I think a flag was raised in September 1983. I stated that Mr. Clark and Mr. Hafer and myself met with Krisher and at that time Mr. Don Krisher told us that when we paid the premium, 500-some-odd thousand dollars, that it looked like we were going to have some financial problems at that time.

This was mid-September 1983, sir.

Mr. **Wise**. You brought up an interesting point. I guess you understand completely the role of Mr. Krisher. Mr. Blair and Mr. Downey, did Mr. Krisher work regularly with you?

Mr. **Blair**. No. I will be glad to answer that, sir. Mr. Krisher, Donald P. Krisher is in the private practice of public accounting. He is a CPA and works for Krisher & Krisher, which is a father and son organization which has been in practice in Kanawha County for years and years as well as the State of West Virginia.

He is employed directly by the district. In other words, he would be an employee of the district in the same way that Kelley, Gidley is and bond counsel and lawyers, real estate individuals, et cetera.

Mr. **Wise**. We have all heard the testimony the project was beginning to default in May. Each month there was a certification. It becomes readily apparent, I gather, in October.

But who should have caught that? Who should have caught it in May, June, or July? Somebody had to be overseeing that. And I appreciate any thoughts or suggestions you have on that.

I can't believe that a 1.3—it is like there is a giant circle, we are all standing looking at it and a $1.3 million anvil drops through the middle and when it drops through everybody turns their back on the circle.

Mr. **Blair**. Probably everybody should have caught it. It is a poor commentary that nobody involved caught it, but I go back again to the fact that the figures were used from the beginning of the project which indicated the capitalized interest was a lower amount than it really was.

Now, why the accountant went back to the original public service commission order and public service commission rule 42 exhibit was probably because that is the way that he had done it for years and years and years in every other case.

The fact of the matter is that this construction notice issue concept was new. As far as I know, it had never been done anywhere, at least in West Virginia.

It is now currently being used on other projects. And I would say that some of the hard knocks we have had in Elk Pinch has taught everybody a lot about construction notes. The only thing you can anticipate out of a construction note issue in my opinion is to reduce the cost of interim financing, what it would take you to borrow the money if you started the project, constructed it and the cost of the borrowing the money to pay periodic estimates from the individuals employed on the project.

Now, you can use it to do that. It was reported based upon the projections that we were going not only to be able to reduce the cost of interim financing, but also to be able to earn money.

Well, the truth of the matter is it just didn't work out that way and it was overly optimistic. If you wanted to go academic on it, to look at it from that viewpoint—but let me give you another example.

In the cash flow analysis that was prepared by Baker, Watts & Co., they indicated that we were going—collective we, all of us—I am so emotionally involved in Elk Pinch, I feel it is as much my project as it is the commissioners'.

I am very much involved with the project. The interest was projected to be 14 percent, 13.93 rounded off to 14 percent. Actually, the bank has found that the interest earnings are only 13.11 percent so there is a differential there of $180,000.

In my opinion, the way I read the documents, somewhere some time the district is due another $180,000 plus or minus from the Wheeling Dollar Bank which agreed to pay them for the use of the residue funds.

This is just another aspect to point out the project the way it works. Construction note issues are rather complicated, another fact which is important to note, that when we got everybody together, when it was reported to me by Jim Downey and Gary Cocharan who works for Krisher & Krisher, they came in and the word got to me about October, everyone was mulling it over whether there was really a financial dilemma or not and they came to me and said we think there is going to be a shortfall when it comes time to pay off the $12.8 million construction notes.

I said I find that hard to believe. I know we have had project cost overruns, but the money is there because look at the differential. Instead of earning the projected 2 percent in arbitrage, it is actually going to be about a 4.72 percentage differential and that is going to earn a lot of money for the district.

Whereupon I then picked up the telephone and called Baker, Watts & Co., and I am not trying to make a case or say whatever happened, it was inadvertent, it wasn't intentional. I discussed the matter with them and even at that time they said no, plenty of money there, no problem.

You guys just don't understand how the construction notice issue really works. Well, I was prepared to agree with that, so then I requested that they send John Lyndon Muth to come to Charleston to go over it with us. We had the bond counsel involved, Krisher & Krisher, Kelley, Gidley.

We had Baker, Watts with John Lyndon Muth. I don't know—was anybody else involved? Let's see, we had the attorney, Dennis Abrams, the attorney for the public service district at that time.

And we all sat down around the table and tried to determine was there really something wrong. Well, we were getting computer printouts as late as November 29, 1983, which indicated, computer printouts from the computer in Baltimore or Philadelphia or wherever it was, numbers coming in, I say Philadelphia because E.F. Hutton was involved in the project, which still indicated that we had surplus dollars available from the cash flow analysis, using the current numbers and putting them in there they were still saying we are going to have excess moneys available.

Then on November 29 is when Jim Downey and Gary Cocharan started asking rather detailed questions to John Lynden Muth and then he said, well, I had better go back and do some additional work on this and that is then, early December, Congressman, is about the time, and I don't remember the exact day—it had to be before December 21 because that is when we could all agree and I signed off, I said, my god, there is a financial dilemma and that is when we went into the meeting and told Bob Evans and Ed Hafer and Walter Jarret that, yes, we did have a financial dilemma.

Mr. WISE. But based on that narration, basically you and others were using the wrong cash-flow projections all the way through, is that a correct summary?

Mr. BLAIR. No; the cash-flow projections that indicated the surplus in the beginning were generated from numbers that we had submitted to Baker, Watts & Co.

Mr. WISE. But that is what you were using all the way through.

Mr. BLAIR. Well, no, sir; that is what I am trying—what I am trying to explain is if you could look at the accountants, I think what you need to do is to compare the cash-flow analysis which is a projection of surplus funds and the utilization of the funds coming in, being invested, and compare that with the monthly report given to the district commissioners by the accountants.

The correlation just isn't there, that is what I am saying. The point was that it should have been, but it wasn't.

Mr. WISE. But the result is there, that there is a $1.3 million deficit, that the district has been in technical default since May, somewhere there are wrong figures.

Mr. BLAIR. Disagreement as to which formula you use whether they were in technical default in May or not. It just is a very complicated matter.

If I could, Congressman——

Mr. WISE. Let me ask Mr. Clark to respond to that.

Mr. CLARK. I would like to respond in the sense of cash-flow analysis. When we speak of cash-flow analysis, I think we have got to look at two things here.

One, the PSD borrowed money on these notes at 9½ percent theoretically. What was the total net interest they were paying? That becomes the predominant question and I think MBI, whoever did the municipal bond type of analysis for, I think, it was DNR showed that the net effect that they were paying was somewhere around 10 or 11 percent interest on that theoretical 9½ percent interest.

When you talk about cash-flow analysis, the critical thing becomes what kind of money is in the bank. If you are trying to project interest earnings to do something that is one thing but if you are trying to build a sewer system, that is something else.

When you start projecting cash-flows based on anticipation of getting grant money up front, getting bond moneys 4 or 5 months before bond moneys actually materialize, your cash-flow is going to show one number that is not a true picture of what is really happening.

This particular case, and I don't know where these numbers came from, it shows the county commissioner depositing $190,000 the first month.

Kanawha County Commission basically is a reimburseable program. They show another $150,000 dropping into the till all at once. That does not materialize.

Where the numbers come from, I don't know, but those numbers are the numbers that screwed up the cash-flow analysis.

The point I am making is that the difference between the net effect of the interest they are having to pay, what the net amount of money was in the bank are different figures entirely from what really is happening.

Mr. **Wise**. Thank you. Just one quick question to the panel. I will just go across the board.

Regardless of whether the numbers were wrong, what was the first date that you knew that money was not available, that there was a deficit? I will start with Mr. Clark and go down the table.

Mr. **Clark**. As Commissioner Evans said, we realized it when we met with Mr. Krisher with the accounting firm. At that particular time, they had a line item budget and where these line item budgets came from, I don't know.

Mr. **Wise**. I just need the date.

Mr. **Clark**. September.

Mr. **Wise**. Commissioner Stump, the same?

Mr. **Stump**. September.

Mr. **Wise**. Commissioner Evans?

Mr. **Evans**. September.

Mr. **Wise**. Mr. Blair, Mr. Downey?

Mr. **Blair**. December for Blair.

Mr. **Wise**. Mr. Downey?

Mr. **Downey**. We were not involved in the meeting that the district had with the accountant and the accountant advised us a couple of weeks later so sometime around the first of October.

Mr. **Wise**. When did you first personally know?

Mr. **Downey**. Sometime around the first of October.

Mr. **Wise**. We will go to vote. The panel is excused. Thank you for your tolerance.

Mr. Molinari has pointed out and urged me to remind you that we may be asking you to respond to written questions. We would appreciate that. And so the subcommittee will resume at 4:45. Thank you.

[Recess.]

Mr. **Levitas**. The subcommittee will please come to order.

The next panel of witnesses are officials of the West Virginia Department of Natural Resources and the U.S. Environmental Protection Agency. The group from the West Virginia State department is headed by Mr. David Robinson, Mr. Henry Longest, Acting Deputy Assistant Administrator of the U.S. Environmental Protection Agency, and Mr. Thomas Eichler who is administrator for region III of the U.S. Environmental Protection Agency are with us today as well and I will let them introduce other individuals in their group.

Before I administer the oath to the witnesses, let me say this—I know Mr. Longest is aware, and perhaps some of the others, that I have been for a long time a great supporter of the Clean Water Act, and environmental protection programs in general. I have defended it, I have tried to improve it when I felt it needed improving and I have tried to increase the funding when I felt we were cutting back on funding at times to the detriment of the environment.

But I must say that I am really at the end of my rope on this thing. After the number of years we have been looking at this program, and after the GAO reports and after the oversight investigations and after the recommendations, once again, to see laid out a situation as we see in these two examples, what I am afraid is a much broader problem, not only millions of dollars of taxpayers' money going down the drain, but not getting the environmental improvement that the public thinks it is paying for, and we are going to be asking specific questions. But the bottom line, is how can we see such a mess continue to occur again and again and again?

I think by any standard these two examples, the Elk Pinch and the Malden plants, in West Virginia, constitute a mess and it is disturbing to hear that in West Virginia it is not even the worst mess.

As I said earlier, the thing that is really frightening, is when the General Accounting Office testifies that this was all done in accordance with procedures and regulations of the EPA. And if that is the case, then what happens when violations occur of the regulations. If this is the way it's supposed to be done, then what happens when it is not done that way. Who is in charge? Who is looking after the public's interest and the taxpayers' dollars?

These are very serious questions because, as a supporter of these programs, it places me in a position of wondering whether it's really worth it or not. If we see year after year, time after time, hearing after hearing, report after report the same problems, then are we doing anybody any good by continuing to shovel money into these programs.

Those are very serious questions coming from someone who is a believer and supporter of what all of you gentlemen have dedicated yourselves to. I am convinced that if people like myself and Mr. Molinari, Mr. Wise, and others, can't get good answers to these questions—how can this mess happen? What can we do to stop it, not just talk about it one more time—then I really think we have got to do some more basic rethinking of where we are headed in this area.

I want to say that by way of introduction simply to suggest that as we hear from you on this, the people on the firing line and in the trenches of this program, that we begin to get some answers to these questions and not just explanations.

In any event, if each of you would please raise your right hands. Do each of you solemnly swear that the testimony you will give before the subcommittee today will be the truth, the whole truth and nothing but the truth, so help you God?

[Chorus of "Yes."]

Mr. LEVITAS. We welcome you here and look forward to your testimony with a great deal of interest.

Mr. Robinson I think is first on the list. Mr. Robinson, if you would first of all introduce your colleagues from West Virginia and then we will hear from you. I will now announce that your entire statement will be made part of the record in its entirety and you may proceed as you so desire.

TESTIMONY OF DAVID ROBINSON, CHIEF, WATER RESOURCES DIVISION, WEST VIRGINIA DEPARTMENT OF NATURAL RESOURCES, CHARLESTON, WV, ACCOMPANIED BY TOM GOODWIN, GRANTS MANAGEMENT SECTION, AND MIKE JOHNSON, ENGINEERING SECTION; HENRY LONGEST, ACTING DEPUTY ASSISTANT ADMINISTRATOR, OFFICE OF WATER PROGRAMS, U.S. ENVIRONMENTAL PROTECTION AGENCY, ACCOMPANIED BY THOMAS EICHLER, ADMINISTRATOR, REGION III, PHILADELPHIA, PA, GREENE JONES, DIRECTOR, WATER DIVISION, AND DENNIS CARNEY, WATER DIVISION

Mr. Robinson. Thank you, Mr. Chairman.

Members of the subcommittee, my name is David Robinson. I am representing Dr. Willis Hertig, director of the department of natural resources. I am chief of the water resources division, a division that has seven branches, one of which is the construction branch about which we are concerned here today. I have with me from that branch Mr. Mike Johnson, who is in charge of our engineering section, and Mr. Tom Goodwin, who is in charge of the grants management section.

Since the passage of the Clean Water Act, approximately $350 million in construction grants have been awarded to construction projects in my State. Fifty-six projects have been completed and are in operation; 23 projects are currently under construction; 17 projects are in preparation for bidding.

The construction grants program is successful and has been an effective mechanism for reducing water pollution in West Virginia. The department of natural resources, through the division of water resources, has a dual role in the approval of wastewater treatment works projects. First, as EPA's designated authority to administer title II program functions and responsibilities in accordance with the delegation agreement executed July 11, 1979, DNR must administer all program functions and responsibilities in conformance with the intent and substance of applicable Federal laws and regulations and EPA directives.

Second, as the designated State water pollution control agency, the division must administer chapter 20, article 5(a) of the State code relating to the issuance of permits for all discharges into State waters and all regulations pertaining thereto, including the State NPDES Program. EPA policy is to delegate management of the construction grants program to the maximum extent possible. The West Virginia delegation agreement included a schedule of delegation relating to specific functions.

On July 1, 1980, the State assumed responsibility for initial functions including review of change orders of less than $100,000. On July 1, 1982, the State assumed responsibility for additional functions including plans and specification review. July 1, 1982, the State assumed delegated responsibility for total approval of facilities plan review.

During calendar year 1983, the division assumed delegation for interim inspections and contract review including change orders in excess of $100,000. The State is currently scheduled to receive delegation for review of applications in part B bid documents in October 1984.

During the initial step 1 facilities planning process, the division utilizes EPA regulations, guidelines and policies to determine whether the most cost-effective project had been proposed. Selected criteria are utilized to evaluate the most cost-effective alternative and to evaluate the appropriateness of the chosen technology including project cost per customer, cost of treatment per thousand gallons, and unit cost per customer for collection.

The division evaluates the public acceptance of the proposed project by reviewing the public hearing summaries. During the step 2 design phase, we review detailed engineering plans and specifications.

Currently we reassess the project during the design stage to determine if it is still indeed the most cost-effective alternative.

We analyze financial affordability of grant applications according to the reasonableness of the proposed financing, based upon the evidence presented by the applicant. We have become increasingly involved in the process of finding additional grants to finalize total project funding in order to assure that projects can proceed in a timely manner.

To comply with recently published EPA regulations, dated February 1984, we are developing a new review strategy to evaluate project affordability. Because of the rural nature of most projects in the mountainous terrain of West Virginia, the total project cost and associated local costs are higher than national norms. We encourage the selection of the most cost-effective systems in utilization of costly alternative technologies in rural areas.

Project affordability varies due to changing financial conditions. The Malden grant process occurred prior to delegation when staff resources were limited, thus reviews were concurrent with EPA.

Procedures in effect during 1976 to 1978, during the Malden grant process, were less detailed and not similar to the present-day review procedures.

The Elk-Pinch project was designed during the 1979–81 period. The State reviewed the plans and specs in greater detail.

On July 1, 1981, EPA delegated final review authority for plans and specs review. However, EPA withheld delegation on the Elk-Pinch project due to overwhelming Federal interest. EPA eventually returned final approval authority to the division in August 1982.

It should be recognized that the last step before starting construction on a project in West Virginia is to obtain public service commission approval of the proposed rate structure.

In reviewing the rate structure, the PSD has a broad range of authority over the total project. We feel that the Elk-Pinch project was subjected to a detailed technical review of the plans and specifications, based upon the information shown in the original part B document, the project was financially sound. The present financial dilemma is due to changing financial conditions beyond our control.

The Malden system has been studied by many. Studies suggest both design and operational problems. Malden with state assistance is trying to identify infiltration and inflow sources through a systemic smoke testing program. Malden has made plant modifications to improve plant performance. The division is assisting the

Malden PSD with a preparation of grant amendment request for legal assistance at the present time.

The division is also chairing a concerned citizens committee which meets to discuss specific problems.

EPA issued an NPDES permit to Malden on September 2, 1980. The new facilities went into operation in October 1980. On October 14, 1982, the State adopted the NPDES permit issued by EPA. In September 1982, the State received a copy of the JRP diagnostic inspection report. This report outlined operational and maintenance problems associated with this project.

Malden was advised that the plant performance must be improved and referred to the JRP report and requested to implement the recommendations.

Permit violations have been substantially reduced since 1982. The few violations which did occur were not significant and did not warrrant enforcement action.

The Construction Grant Program has undergone an evolutionary process since the enactment of the Clean Water Act. Significant amendments came in 1977, with modifications, encouraging alternative and innovative technology. Additional amendments to the program came in 1982, encouraging additional oversight on financial and management capability.

Specific requirements in effect at the time of approval for the Malden PSD and Elk Pinch PSD were more generalized than the current regulations. The determination of responsible application is basically an administrative procedure based on the applicant's certification of required information and compliance with specific laws.

The State code, chapter 16, provides counties with authority for creating public service districts which have responsibility for publicly owned sewer treatment works. The counties are also provided authority to appoint or remove public service district commissioners. In July 1981 the State code was amended to require PSD commissioners to complete a training program established by the PSD in conjunction with the DNR and department of health. Since the fall of 1981, the division has been an active participant in the training program providing instruction for the public service district commissioners. Prior to July 1981 there were no training or experience requirements placed on public service district commissioners. EPA has issued new regulations on financial management capability for construction, operation and maintenance of publicly owned wastewater treatment systems that require applicants to demonstrate their capabilities.

The division became aware of a possible financial deficit regarding the Elk Pinch project in November 1983. At that time the division received conflicting information and was unable to verify the existence or exstent of any deficit. The Elk Pinch PSD voted to stop work on the project December 17, 1983. Since then, a series of meetings have been held to clarify the financial situation concerning the project and to study proposed solutions.

The division and EPA agreed to employ the Government-financed research center to determine the extent and cause of the deficit. On February 9, 1984, the GFRC issued their initial report with a recommended proposal to remedy the situation. On March

15, 1984, the GFRC issued their final report detailing the specific causes of the deficit along with general recommendations. On April 11, 1984, Miles Dean, director of our Governor's office of economic and community development, hosted a meeting of all involved parties and a new proposal to resolve the problem was presented by Kelley, Gridley, Blair & Wolfe, and Baker Watts & Co.

The division issued a memorandum which analyzed the proposal presented at the meeting and summarized those project parameters the participants had mutually accepted. The State and EPA determined the proposal to be feasible. Construction could be resumed and the project completed with a 13-cent-per-thousand-gallon rate increase.

On April 18, 1984, Bernard Clark of the regional development authority, presented a new project analysis to the Kanawha County Commission which the PSD favored. Since April, DNR has been responding to requests for information and has been providing assistance in developing a grant amendment for project coordination services. Further, DNR has been cooperating with other Federal and State agencies in determining specific grant eligibility and facilitating transfer of the information.

That concludes my statement, Mr. Chairman.

Mr. LEVITAS. Thank you very much.

[The statement of Mr. Robinson follows:]

SUBJECT

Response to Congressional Inquiry of the U.S. House of Representatives, Committee on Public Works and Transportation, Subcommittee on Investigations and Oversight

PRESENTED BY

West Virginia Department of Natural Resources
Dr. Willis H. Hertig, Director

Division of Water Resources
David W. Robinson, Chief

Date

May 23, 1984

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Committee on Public Works and Transportation
U.S. House of Representatives
Room 2165, Rayburn House Office Building
Washington, D.C. 20515
TELEPHONE AREA CODE 202, 225-4472

B-376 Rayburn Building
Washington, D.C. 20515
May 17, 1984

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MAY 1[illegible] 1984
Water Resources
Division

Mr. Willis H. Hertig, Jr.
Director
Department of Natural Resources
State of West Virginia
Charleston, West Virginia 25306

Dear Mr. Hertig:

On Wednesday, March 23, 1984, the Subcommittee on Investigations and Oversight of the Committee on Public Works and Transportation will hold a hearing to review the performance and financial management of the Malden and Elk Pinch Public Sewer Districts wastewater treatment projects which have been constructed pursuant to the requirements of, and with funds authorized by the Federal Clean Water Act. This letter is to confirm prior conversations between members of our respective staffs, and to request that you, or your designee appear before the Subcommittee to assist us with this important review.

The Subcommittee's inquiry into these two projects is part of our continuing oversight of the law's multi-billion dollar wastewater treatment Construction Grants Program. In this regard, it is also requested that you arrange for Mr. David Robinson, Chief of your Department's Water Resource Division, which has a direct responsibility for managing this program for the state of West Virginia, to be present at these proceedings as well.

In order to assist you in preparing for these hearings, we ask that you or your designee be prepared to discuss the following matters:

-- Your Department's policies, practices and procedures for reviewing and approving wastewater treatment system grant applications, particularly with respect to the cost-effectiveness and affordability of the proposed projects, and the extent to which these were applied in the two subject projects.

-- The steps that have been, and are being taken to determine the causes of the chronic operation and maintenance problems with the Malden PSD project, and the steps being taken to remedy the situation. Please be prepared to discuss why no enforcement action has been taken by your Department with respect to the repeated violations of the Malden facility's NPDES/state discharge permit.

-- The Department's policies, practices and procedures for determining a grant applicant's qualifications as a "responsible grantee," particularly with respect to a prospective grantee's capability for providing adequate financial management of a grant project, and how these were applied in the two subject projects.

-- The steps being taken to determine the causes and responsible parties for the financial problems that have resulted in the halting of construction in the Elk Pinch project, and the steps being taken by the state to protect the public's interest in this project.

The hearing is scheduled to begin at 10:00 a.m. in room 2167 of the Rayburn House Office Building, Washington, D.C. It is planned that you (or your designee) and Mr. Robinson will be called by the Subcommittee following the testimony of the General Accounting Office, who will be our first witnesses. Should you or Mr. Robinson desire to have any other Department officials present to assist you, you may do so.

It is requested that, in accordance with the Rules of the House of Representatives and the Committee, that you be prepared to summarize your presentation in about 10 minutes. You may, if you desire, submit a written statement for inclusion in the record. The written statement may be as long and detailed as you deem necessary. Also, in accordance with the Committee's rules, it is requested that you provide the Subcommittee with a few (two or three) copies of your statement prior to the hearing if possible, and that you provide 75 copies at the time of the hearing.

I look forward to your assistance in this matter, and to a candid and substantive contribution by your Department to our review.

With best wishes, I am,

Very truly yours,

Elliott H. Levitas
Chairman
Subcommittee on
Investigations and Oversight

EHL/tjm
cc: Mr. David Robinson
Mr. John Hall

Municipal Wastewater Treatment
Construction Grants Program in West Virginia

Since the passage of the Clean Water Act in 1972, approximately three hundred fifty million dollars in construction grant funds have been awarded to Step 3 (construction) projects in the State of West Virginia. Fifty six projects have completed construction and they are in operation. Twenty three projects are currently under construction. Additionally, seventeen projects are in preparation for bidding. As evidenced by the large majority of these projects, the construction grants program has been an effective mechanism for reducing water pollution in the State of West Virginia by providing treatment for municipal wastewater.

The Department of Natural Resources , the Division of Water Resources actually has a dual role in the approval of municipal wastewater treatment works projects funded under Title II of the Clean Water Act. First, as EPA's designated authority to administer Title II program functions and responsibilities in accordance with the Delegation Agreement executed July 11, 1979, DNR must administer all program functions and responsibilities in complete conformance with the intent and substance of all applicable federal laws, Title II regulations, and EPA policy directives. Secondly, as the designated State water pollution control agency, the Division must conform to and administer Chapter 20, Article 5A of the West Virginia State Code relating to the issuance of permits for all discharges into State waters, etc. and all regulations pertaining thereto including the State National Pollution Discharge Elimination System regulations (NPDES).

EPA's policy is to delegate management of the wastewater treatment construction grants program to the maximum extent possible consistent with the objectives of the Act, prudent fiscal management and EPA's overall national responsibility for the program. The objective of delegation is to eliminate duplication of Federal and State effort in the management of the construction grants program, to increase State participation in the construction grants program, and to improve operating efficiency.

Program delegation is accomplished through a formal delegation agreement between the Regional Administrator and the State. In the case of West Virginia, the Delegation Agreement was executed on July 11, 1979 and included a schedule of delegation relating to the various specific functions.

On July 1, 1980, the State assumed delegated responsibility for the following specific functions:

1) payment schedules
2) administrative review of facilities plans
3) operation and maintenance manuals
4) sewer use ordinances
5) pre-design conferences
6) pre-construction management
7) review of change orders less than $100,000

On July 1, 1981, the State assumed delegated responsibility for two additional functions:

1) plan and specification review
2) facilities plan review for environmental assessment

On July 1, 1982, the State assumed delegated responsibility for total approval of facilities plan review which encompassed four separate functional appendices. In December of 1982, the Division assumed responsibility for value engineering reviews.

During calendar year 1983, the Division assumed delegation for interim inspections in April and Contract review (including change orders over $100,00) in September.

The State is currently scheduled to receive delegation for review of applications and Part B bid documents in October 1984.

1 (A) What Policies, Practices, Procedures (past and present) does the Department of Natural Resources use to approve projects?

During the initial facilities planning process (Step 1) the Division utilizes EPA regulations, guidelines, and policies to determine whether the most cost effective project has been proposed. A cost effective analysis is an evaluation of capital, operation and maintenance costs over a 20 year period with the most cost-effective project being the one with the lowest present worth of all costs evaluated. Prior to the Division being delegated facilities planning reviews in July of 1982, the EPA had final review and approval authority for these plans. After July, 1982, the Division assumed the role of final approval authority. The State Health Department (SHD) does have regulations pertaining to sewage systems including design standards that are utilized on all construction grants projects.

To evaluate the most cost effective alternative the Division utilizes select criteria to evaluate the appropriateness of the technology chosen including, project cost per customer, cost of treatment per 1000 gallons, and unit cost per customer for collection. The Division analyzes the public acceptance of the proposed project and rates as evidenced by the public hearing summaries. During the design phase (Step 2) of projects, we review detailed engineering plans and specifications and recommend the utilization of less expensive construction materials and techniques when appropriate. Currently we reassess the project during the design stage to determine if it is still indeed the most cost-effective alternative as was shown in the previous facilities plan.

We have always analyzed financial affordability of grants applications according to the "reasonableness" of the proposed financing based upon the evidence presented by the applicant. We have become increasing involved in the process of finding additional grants to finalize total project funding in order to assure that projects can proceed in a timely manner. Since 1980, the Division has maintained a separate pre-construction unit in the Grants Management Section of the Construction Grants Branch to coordinate the grantees efforts with the various federal and state agencies.

In accordance with recently published EPA revised financial affordability regulations, dated February, 1984, we are developing a new formal review strategy to evaluate project affordability.

Due to the rural nature of most WWTP projects and mountainous terrain in the State of West Virginia, the total project costs and the associated local share costs are higher than national norms. In recognition of these facts, since 1980 we have directly assisted EPA grantees in acquiring additional funding to lower the final user rates to the system customers. From the technical review aspect, we encourage the selection of the most cost effective systems based upon EPA regulations, guidelines and policies. Further, we recommend the utilization of less costly alternative technologies in rural project areas.

Project affordability may vary due to changing financial conditions. The actual implementation of the selected alternatives are often dependent upon the availability of additional funds beyond the control of the Division.

1 (B) How were these policies applied to both projects?
Malden PSD

The Malden facilities plan was received for review in January 1976 prior to delegation. In April, 1976, the plan was sent to EPA for "concurrent" review due to limited staff resources. EPA commented on the plan in June, 1976. Later that month the consulting engineer responded to EPA's review comments. The plan was then approved in September, 1976.

After EPA's approval of the Malden facilities plan and subsequent award of the Step 2 grant on October 14, 1976, the completed plans and specifications were submitted for review and approved by the Division in September, 1977 and transmitted to EPA for approval. EPA approval was given in April, 1978. The pure oxygen type treatment process was a new concept for municipal wastewater treatment and there was little historical data concerning the actual performance and the capabilities of this technology. We now know that other alleged design deficiencies went unnoticed.

After award of EPA's Step 3 grant in September, 1977 the project was bid much higher than original estimates ($13 M vs $22 M). The Part B (post bid documentation) was submitted to the State on July 28, 1978 and transmitted to EPA on August 1, 1978. The Division approved the Part B soley for completeness of the submission.

In summary, procedures in effect during 1976 to 1978 during the Malden grant process were not similar to the present day review procedure.

Elk-Pinch PSD

The Elk-Pinch PSD facilities plan was received in March, 1976. The most cost-effective alternative shown was to connect to the City of Charleston system providing the City's lines could be shown to have capacity to take the Elk-Pinch flow without any adverse environmental effect. At that time, Charleston was just beginning its own 201 facilities planning study with a projected two year completion date. The Elk Pinch PSD facilities plan (Phase I) was approved in March 1977 by EPA, but only for a portion of the collector/interceptor system. The solution of where treatment was to be provided was deferred pending Charleston's completion of its I/I Analysis.

In September, 1978, the Division received the Phase II facilities plan for the EPPSD. Due to problems encountered with the completion of the Charleston facilities plan and

I/I Analysis, the Phase II facilities plan report recommended the construction of a separate plant to serve EPPSD as opposed to going to Charleston's plant. The plan was reviewed and approved by EPA in August, 1979. The State review of the Phase II plan was a little more detailed than the Phase I plan since in 1978 we had acquired additional staff by that time period.

The design (Step 2 stage) of the EPPSD project was also accomplished in two phases. Phase I design started in March, 1977 and Phase II in Sept. 1979. The Phase I plans/specs were submitted to the Division in December, 1978, and the Phase II plans/specs in March 1980. These documents were reviewed in detail before being forwarded to EPA for final approval. Phase I plans were approved by the Division in April, 1979 and revised plans approved in August, 1980. Phase II plans were approved and sent to EPA in September, 1980. Final EPA approval occurred in October 1980.

On July 1, 1981, EPA delegated to the Division final review authority for plans/specs, however EPA withheld that delegation on the EPPSD project due to overwhelming Federal interest. EPA eventually returned final approval authority to the Division for the EPPSD in August, 1982.

During 1981, the State Public Service Commission (PSC) requested that a package treatment plant be designed to be bid as an alternate to the original plant design. It should be recognized that the last step before starting construction on a project is to obtain PSC approval of the proposed rated structure.

In reviewing the rate structure, the PSC has a broad range of authority over the total project. Under State Law the PSC is final authority for reviewing and approving utility rate structures.

The bids received on the two treatment plant alternatives showed the package plant to be the lowest responsive, responsible bid. These bid results were approved by EPA in December, 1982, and the plant construction was initiated.

In summary, the Elk-Pinch PSD project was subjected to a detailed technical review of the plans and specifications. Based upon the information shown in the original Part B document, the project was financially sound. The present financial dilemma is due to changing financial conditions over which our Division has no control.

2 (A) What steps have been and are being taken determine the causes of the chronic O & M problems with the Malden project?

Several agencies and individuals have studied the problems with the Malden system including the Inspector General, the General Accounting Office, JRB & Associates, Kelley, Gidley, Blair & Wolfe, Inc., as peer reviewer, and this Agency.

Currently, we are is working with Legal Counsel of MPSD to develop an EPA grant amendment request for legal service assistance to recover damages against offending parties.

The above referenced studies basically state similar problems and causes, such as:

1) Surging from the intermittent flows causing plant washout and permit non-compliance
2) Lack of flow measurement devices for process control
3) Commission of a decant tank for digested sludge causing sludge handling problems
4) Short circuiting in the secondary clarifer causing excessive solids in effluent
5) Susceptibility of plant equipment to power failure causing down time problems

These can be considered design deficiencies affecting plant performance. Other problems include:

1) Staffing level
2) Need for automatic sampling equipment
3) Inability to collect monthly sewer bills, and
4) Significant infiltration/inflow problems attributable to customers tying in roof drains and poor house laterals

2 (B) What Steps are being taken to remedy these problems?

a) MPSD is trying to identify I/I sources through a systematic smoke testing program with State assistance
b) MPSD has made minor plant modifications to improve plant performance
c) As stated earlier, the Division is assisting the District in the preparation of a grant amendment request
d) The division chairs a "concerned citizens committee" which meets to discuss specific problems

2 (C) Why was not enforcement action taken to repeated violations of the NPDES permit?

The EPA issued a NPDES permit to Malden PSD on September 2, 1980. The new facilities went into operation in October 1980. On October 14, 1982, the State adopted the NPDES permit issued by the EPA.

In September, 1982, the State received a copy of the JRB Associates diagnostic inspection report. This report outlined the operational and maintenance problems associated with this project and also discussed the causes.

On October 15, 1982 Malden requested the State to waive the effluent limitations for Total Kjeldahl Nitrogen due to the inability of the treatment works to meet the limitations. On December 9, 1982, the State advised the PSD that the waiver request could not be granted; but if the PSD could demonstrate that the current design can only achieve the requested level, and if they would submit a proposal for permit modification, a phased abatement approach could be considered. We pointed out that there were also violations of the BOD_5 and suspended solids and that the facility operation must be improved in order to meet these other permit parameters. They were referred to the JRB Associates report to implement the recommendations.

On April 5, 1983, the PSD submitted the required information and we were prepared to modify the permit accordingly. However, our review of the monitoring reports showed permit compliance.

Attached is a summary of the discharge monitoring reports submitted by the Malden PSD. As indicated in this attachment, permit effluent violations have been substantially reduced since November 1982. The violations, which did occur were not significant and did not warrant enforcement action. (see attached sheet).

3 What are the Division's policies, practices and procedures for determining a grant applicant's qualifications as a "responsible grantee" particularly with respect to financial management capability. How were these standards applied to the two subject projects?

The Wastewater Treatment Construction Grants Program has undergone an evolutionary process since the enactment of the Clean Water Act in 1972. Significant amendments to the direction of the program came in 1977 with specific modifications encouraging the utilization of alternative and innovative technologies. Additional amendments to the program came in 1981 specifically encouraging additional oversite to applicants financial and management capability. The specific requirements in effect at the time of approval for the Malden PSD and ELK-PINCH PSD were more generalized than current regulations.

Since the Division executed the delegation agreement with EPA, the Division has always adhered to the federal and state regulations and laws applicable at the time of the individual application reviews. The determination of a responsible applicant is basically an administrative procedure based upon the applicants certification of required information and compliance with specific laws.

The major relevant regulation and laws are listed below in chronological order of their enactment.

Pursuant to the EPA 40 CFR Part 35, a municipality is defined as " a City, a town, burough, parish, district, association, or other public body created under State law, or Indian tribal organization, have jurisdiction over disposal of sewage, industrial wastes, or other waste or a designated and approved management agency under section 208 of the Act".

Pursuant to the EPA regulations (30.301):

a) EPA awards assistance only to applicants which are eligible under applicable statutes and regulations and which have the ability to meet the following criteria:

    1) Financial resources, technical qualifications, experience, organization, and facilities adequate to carry out the project, or a demonstrated ability to obtain these;
    2) Resources to meet the project completion schedule contained in the assistance agreement;
    3) A satisfactory performance record for completion of projects and subagreements;
    4) Accounting and auditing procedures adequate to control property, funds, and assets, as required in Subpart E of this part;
    5) Procurement standards that comply with Part 33 of this Subchapter;
    6) Property management systems for acquiring, maintaining, safeguarding;
    7) Demonstrated compliance or willingness to comply with the civil rights, equal employment opportunity, labor law, and other statutory requirements under Subpart F of this part.

b) EPA considers the submission of an assistance application as the assurance that applicant can and will meet these standards. EPA may conduct a preaward audit or other review to determine the applicant's capabilities.

c) EPA must notify the applicant in writing if it finds it unable to meet these standards. The written notice will state the reasons for the finding. The applicant may appeal EPA's findings under the disputes procedures in Subpart L.

d) Individuals, agencies, or organizations voluntarily excluded, suspended, or debarred under 40 CFR Part 32 are ineligible to receive assistance."

In the State of West Virginia, incorporated cities, towns and villages are vested with the authority for the construction, operation and maintenance of publicly owned sewer treatment facilities. The State Code, Chapter 16, provides the counties the authority for creating public service districts to have responsibility for publicly owned sewer treatment works. Further, the counties are provided the authority to appoint or remove public service district commissioners.

In July 1981, the WV State Code was amended to require public service district commissioners to successfully complete a training program established by the Public Service Commission in conjunction with the Department of Natural Resources and the Department of Health. Since the fall of 1981 the Division has been an active participant in the training program, providing instruction for the public service district commissioners. The direct management of the training program is vested with the West Virginia Public Service Commission. Prior to the July, 1981, there were no training or experience requirements placed on public service district commissioners.

Recently, February 17, 1984, EPA issued final regulations (40 CFR Part 35) on financial and management capability for construction, operations and maintenance of publicly owned wastewater treatment system. The new regulations require the applicants to demonstrate they have answered five questions:

(1) What is proposed in the facilities plan?
(2) What is the total costs of the proposed treatment system?
(3) How will construction, operation and maintenance of the facilities be financed?
(4) What are the total annual cost per household? and

(5) What are the roles and responsibilities of the local governments involved?

The demonstration must also include a written certification by the applicants that they have the necessary financial and management capabilities to complete and successfully operate the treatment system.

4 What steps are being taken to determine the causes and responsible parties for the financial problems associated with the ELK-PINCH project and what steps has the State taken to protect the public interest in this project?

The Division became aware of a possible financial deficit regarding the ELK-PINCH PSD project in November of 1983. Unfortunately, at this time, the Division received conflicting information and was unable to verify the existence or extent of any deficit.

On November 19, 1983, the ELK-PINCH PSD commissioners requested from their consultant a complete financial update on the construction budget to determine the status of all funds and expenses associated with the project. The ELK-PINCH PSD commissioners voted to stop work on the project on December 17, 1983. On January 3, 1984, the Division met with the EPA, the EPPSD chairman and counsel, representatives of GFRC and KGB&W to study the revised financial budget summary to determine the extent of the budget deficit. This marked the first of a series of meetings to clarify the financial situation concerning the project and to study proposed solutions.

Due to confusion surrounding the extent of the deficit and conflicting information regarding the responsibilities of the various involved professionals the Division and EPA agreed to employ an impartial outside firm with financial expertise capable of analyzing the situation and providing clarification concerning: the extent of the deficit; the cause of the deficit; the relative importance of the factors creating the deficit and possible remedies to eliminate the problems hindering completion of the project. "The Government Finance Research Center"(GFRC) in Washington D.C. was contracted to provide an independent report analyzing the problems.

On February 9, 1984, GFRC issued their initial report outlining the factors creating the problem and the extent of the deficit. The report recommended a proposal to remedy to the situation. Later in that month, the Division met with all involved parties at the Kanawha

County Courthouse to present the GFRC proposal and to discuss other project related issues. The result of the meeting was to assign additional new tasks to specific parties to develop information necessary for decision making purposes.

On March 15, 1984, GFRC issued their final report detailing the specific causes of the deficit in the construction budget and evaluating the relative impact of the various problems creating the financial deficit. The report contained general recommendations. Later in March, an additional meeting of involved parties was held to discuss the final GFRC report and the additional information that was developed. The final report prompted additional questions and more information was requested by several of the participants.

On April 9, 1984, KGB&W issued an updated financial report on the project. On April 11, 1984, Miles Dean, Director, Governor's Office of Economic and Community Development (GOECD) hosted a meeting, of all involved parties and a new proposal to resolve the problem was presented by KGB&W, Inc. and Baker Watts and Company. During the course of this meeting all parties agreed to accept the project estimates presented by KGB&W and the customer count presented by the WV Public Service Commission. The PSD Commissioners arranged to meet at a later date to discuss the proposal presented at this meeting. On April 13, 1984, the Division and GOECD issued a joint memorandum which analyzed the proposal presented at the meeting and summarized those project parameters the participants had mutually accepted. From this analysis, the proposal was determined to be feasible and the construction project could be completed with a thirteen cent per thousand gallon rate increase.

On April 18, 1984, Bernard A. Clark of the Regional Development Authority, presented a new project analysis to the Kanawha County Commission and the ELK-PINCH PSD Commissioners. In this same month, the ELK-PINCH PSD Commissioners rejected both the GFRC proposal and the proposal outlined in the April 13th memorandum and adopted a third method based on the analysis developed by Mr. Clark.

Since April, DNR has been responding to requests for information by the PSD and has been providing assistance in developing a grant amendment for project coordination services. Further, DNR has been cooperating with other State and federal agencies in determining specific grant eligibilities and facilitating the transfer of information.

Page 1 of 2

5/21/84

PERFORMANCE RECORD FOR MALDEN POTW - 1980 to PRESENT

MONTH	YEAR	BOD 30 DA.AV.	BOD DA.MAX.	TSS 30 DA.AV.	TSS DA.MAX.	TKN 30 DA.AV.	TKN DA.MAX.
8	80	5.5	6.7	9	11	--	--
9	80	10	16	46	90	4.1	5.4
10	80	8	17	61	83	5	7
11	80	24	36	54	84	14	24
12	80	33	69	43	54	24	30
1	81	38	84	46	84	27	32
2	81	19	33	28	46	19	28
3	81	27	39	39	48	20	25
4	81	15	24	24	40	20	26
5	81	18	42	30	40	22	28
6	81	23	44	41	98	14	23
7	81	33	90	47	104	18	28
8	81	22	32	21	40	11	26
9	81	32	116	22	36	9	29
10	81	31	61	29	40	25	32
11	81	20	39	32	46	30	34
12	81	37	70	31	42	24	33
1	82	60	108	62	108	21	29
2	82	51	--	49	60	16	22
3	82	33	65	37	83	19	29
4	82	22	29	35.5	66	23.7	30.7
5	82	46	107	41	66	30.4	56.6
6	82	27	66	30	84	19.5	33.5
7	82	23	29	25	40	24	36
8	82	22	33	23	37	21	34
9	82	24	33	18	31	23	28
10	82	28	36	23	38	23	29
11	82	19	33	19	27	18	28
12	82	14	19	20	28	17	24
1	83	21	27	24	30	20.6	24.4
2	83	17	22	16	27	17.9	20.7
3	83	24	32	17	28	19.4	22.0
4	83	17	26	15	23	13	20
5	83	10	22	12	22	13	17

continued

5/21/84

Page 2 of 2

PERFORMANCE RECORD FOR MALDEN POTW - 1980 to PRESENT

		BOD		TSS		TKN	
MONTH	YEAR	30 DA.AV.	DA.MAX,	30 DA.AV.	DA.MAX.	30 DA.AV.	DA.MAX.
6	83	15	22	20	27	19	25
7	83	28	69	18	26	15	24
8	83	21	35	19	41	19	26
9	83	19	47	16	25	17	25
10	83	13	20	16	25	15	22
11	83	23	45	28	62	14	24
12	83	18	34	23	66	14	26
1	84	14	25	17	34	15	20.4
2	84	10	19	11	15	16	23
3	84	13	21	17	33	16	20.8

Note: Values underlined indicate non-compliance.
State adopted NPDES Permit in Oct. 1982

Malden PSD Permit Limitations

		30 day Avg.	Daily Max.
BOD_5	(June-Oct.)	20 mg/1	40 mg/1
	(Nov.-May)	30 mg/1	60 mg/1
TSS		30 mg/1	60 mg/1
TKN		18 mg/1	36 mg/1

DRAFT

Date: 4/2/79

AGREEMENT
FOR THE DELEGATION OF CERTAIN
WASTEWATER TREATMENT CONSTRUCTION GRANT FUNCTIONS

This AGREEMENT is entered into by and between the United States Environmental Protection Agency, Region III ("EPA") and the State of West Virginia (the "State").

BACKGROUND

WHEREAS it is the desire of EPA and the State to eliminate unnecessary duplication of effort and delays in the administration of the Construction Grants Program (the "Title II Program") under the Clean Water Act of 1977, 33 U. S. C. §§466 *et seq*. (the "Act") and thereby establish a more efficient program.

WHEREAS EPA desires to give to the State and the State desires to assume an expanded role in the administration of the Title II Program;

WHEREAS it is the desire of EPA and the State that the State shall ultimately be responsible for the day-to-day and project-by-project management of the Title II Program;

WHEREAS §205(g) of the Act and implementing regulations published as 40 C.F.R. Part 35, Subpart F provide for the award of grant monies to the State to assist it in the administration of the Title II Program;

WHEREAS the Regional Administrator of EPA Region III (the "Regional Administrator") having reviewed the State's present and proposed staff organization and other State resources, has determined that the State has the capability to undertake certain Title II Program functions and responsibilities; and

WHEREAS EPA and the State wish to establish a framework for the delegation of such Title II Program functions and responsibilities.

NOW THEREFORE, the parties hereto, intending to be legally bound, hereby agree as follows:

1. Responsible State Agency

The State hereby designates the Division of Water Resources of the Department of Natural Resources as the sole State Agency to which Title II Program functions and responsibilities may be delegated by EPA. All reference to the State or the Division in this AGREEMENT shall be deemed to include the other unless the context dictates otherwise.

2. State Assurances

A. The State hereby assures EPA that it intends to and shall execute all functions and responsibilities delegated to it by EPA in full and complete conformance with the intent and substance of all applicable Federal laws and Title II regulations which are presently in effect or which may come into effect during the life of this agreement, including, but not limited to, the applicable provisions of the Act, regulations contained in 40 C.F.R. Parts 25, 30 and 35; all Construction Management Assistance Grant (CMAG) Conditions; all applicable EPA Program Requirements Memoranda, and any executed State/EPA Agreement.

B. EPA shall interpret all existing and future applicable Federal laws, Title II Program regulations, policy directives, Program Requirements Memoranda, Orders, and other issuances and shall keep the State advised of such interpretations and the manner in which said laws, regulations, directives, orders, memoranda, and other issuances are to be implemented by the State. Where the State is uncertain of EPA's interpretations it shall promptly request EPA to provide the necessary interpretations and guidance.

C. The State shall, consistent with all EPA guidance, implement all new laws, Title II regulations, and other EPA requirements beginning with their effective date.

D. Should a State law conflict with Federal requirements, the Federal requirements shall be considered minimum requirements.

E. The State shall implement and comply with the schedule for assuming responsibility for Title II Program functions and responsibilities as listed in Attachment 1 to this Agreement. Actual delegation of these activities shall be made through the execution of Appendices to Attachment ___ of this AGREEMENT. Each Appendix ("Functional Agreement") shall describe in detail the Title II program functions and responsibilities being delegated and the rights and obligations of the parties to it.

F. Notwithstanding any other provisions of this AGREEMENT, including the Schedule for the assumption of the Title II Program functions and responsibilities contained in Attachment 1 hereto, the delegation of specific functions and responsibilities other than those delegated concurrently with the execution of this AGREEMENT are contingent upon the State's development and demonstration of the capability to administer the scheduled activity. Such determination shall be made by the Regional Administrator in his sole discretion. The State further agrees that no significant changes in the organizational structure or staff (as described in Attachment 2) of the Division impacting this AGREEMENT shall be undertaken without prior written EPA concurrence.

3. Construction Management Assistance Grant

A. The State shall apply for a CMAG promptly after execution of this AGREEMENT. The State may, in each fiscal year's priority list for use of its construction grant allocation, or by amendment thereto, propose that the Regional Administrator reserve up to two percent (2%) of the State's construction grant allotment under §205 of the Act for that fiscal year. Within that limit, the Regional Administrator may award a grant for one hundred percent (100%) of the estimated allowable costs of administering or preparing to administer certain elements of the Title II Program under §§201, 203, 204, and 212 of the Act, and obtaining and reviewing information associated with other requirements of the Title II Program, on behalf of EPA, as the Regional Administrator deems appropriate.

B.1. Section 205(g)(2) of the Act makes provision for financial assistance to the State for the purpose of administering programs under §§402, 404 and 208(b)(4) of the Act. Any such financial assistance will be made in conjunction with future grant awards under §§106 or 208 of the Act, as appropriate, and will be administered under the Federal laws, rules, regulations, and guidelines governing those programs.

2. No such supplemental grant assistance will, however, be made for the State's administration of the §§402, 404, or 208(b)(4) programs unless and until a substantial portion of the Title II Program has been delegated to the State by EPA.

3. Pursuant to the provisions of 40 C.F.R. §35.1000(c), the amount of funds which may be available under a §205(g)(2) grant for said programs shall be limited to those funds remaining in the reserved portion of the State's allotment after a determination by the Regional Administrator of the amount of grant funds reasonably necessary to provide for the management of the ultimate delegation of the Title II Program by the State.

C. A prerequisite to the award of a CMAG to the State is the reprogramming of grant funds awarded the State under §106 of the Act. The State's immediate plan for the use of these funds is contained in Attachment 3 to this AGREEMENT. The Regional Administrator hereby tentatively approves the State's reprogrammed use of these funds. Final allocation of such funds must, however, be made concurrently with the development of a work program for the State's water pollution control program as a part of the §106 grant process. Accordingly, final disposition of the reprogrammed funds will be made at that time.

D. As additional Title II Program functions and responsibilities are delegated to the State, further reprogramming of §106 funds may be necessary. Such reprogramming will be made at the time of such future delegations.

E. Payments to the State under a CMAG shall be made in accordance with the terms of the Grant Agreement and the provisions of 40 C.F.R. §35.1025.

4. Level of State Water Pollution Control Program Effort

A. In order for the costs incurred by the State under this AGREEMENT to qualify for a CMAG, the maintenance of effort requirements outlined in 40 C.F.R. §35.1016(a) must be satisfied. The maintenance of effort requirement at the fiscal year 1977 level of effort is a prerequisite to the initial or later year CMAGs. The State hereby represents that the expenditures of non-Federal funds for recurrent expenses of the water pollution control programs operated by the State in fiscal year 1977 amounted to $______________.

B. For the purposes of this AGREEMENT, the non-Federal expenditures for recurrent expenses for water pollution control programs are defined as those expenditures which are identified as being recurrent by generally accepted accounting principles and approved by the Regional Administrator. Water pollution control programs costs are those allowable project costs accrued under the §106 grant.

C. If the Regional Administrator determines that the maintenance of effort requirement will not be met for any fiscal year, no CMAG shall be made. However, if the Regional Administrator determines that a reduction in State expenditures is attributable to a general non-selective reduction in the programs of the executive branch agencies of the State, a CMAG may be awarded.

5. Recordkeeping; Accounting Procedures; Audit

A. The State shall keep and maintain for at least three (3) years (or such further period of time as shall subsequently be required by EPA pursuant to 40 C.F.R. §30,805 or otherwise) after the completion of a final audit by EPA of each construction project administered in whole or in part by the State, records of all actions taken by the State with respect to each project. With respect to construction projects which EPA does not intend to audit, the

State shall keep and maintain said records for the period described above, following final payment by EPA of the grant funds allocated to each construction project.

B. Notwithstanding the provisions of paragraph 6.A. above, the State shall keep and maintain all records relating to the determination of industrial cost recovery obligations until the cost recovery period for the construction project concerned shall have expired.

C. The State shall follow those accounting procedures and practices contained in Attachment 4 to this AGREEMENT entitled "Accounting Procedures". These practices and procedures are hereby approved by EPA as sufficient to properly and accurately reflect the State's expenditures incurred under a CMAG in the conduct of delegated Title II Program functions and responsibilities.

D. The State shall make no material changes to the accounting practices and procedures contained in Attachment 4 without first obtaining EPA's written concurrence.

E. In addition to any accounting and reporting requirements established in Attachment 4 to this AGREEMENT, the State shall keep and maintain all records of expenditures incurred in the conduct of Title II Program functions and responsibilities under a CMAG for at least three (3) years (or for such further period of time as shall subsequently be required by EPA pursuant to 40 C.F.R. §30.805 or otherwise), after the completion of an audit of these records by EPA.

F. The records described in paragraphs 5.A., 5.B., and 5.E. above, shall be made available to EPA, the Comptroller General of the United States, other concerned Federal agencies, and any of their respective authorized representatives for audit, inspection, and copying at all reasonable times.

G. Whenever auditors from EPA or any other Federal agency shall request a response to comments upon any action taken occurring under the Title II Program, whether taken by a grant applicant or recipient, a contractor, the Division, or EPA in reliance upon a Division action, the Division shall punctually review the situation in question and furnish such factual material and otherwise cooperate fully with EPA in documenting any requested response.

6. Reports

A. The State shall submit to EPA, on a quarterly basis, a summary of costs incurred by it in performing delegated Title II Program functions and responsibilities under a CMAG. Each such quarterly report shall be submitted to EPA within thirty (30) days after the close of each fiscal quarter. The reporting format utilized by the State shall be agreed upon by the State and EPA in advance of the first required report but shall, at a minimum, display costs incurred by each delegated Title II Program function.

B. The State shall submit to EPA quarterly reports describing the progress made with respect to each delegated Title II Program function. These reports, which shall also contain work projections for the following quarter, shall be submitted to EPA within thirty (30) days after the close of each fiscal quarter. The precise format and substance of these reports shall be agreed upon by EPA and the State in advance of the first required report.

7. State Certifications

A. The State shall furnish written Certifications to the Regional Administrator, on a project-by-project basis, that applicable Federal requirements have been met. Each Certification shall be supported by a checklist or other documentation, acceptable in form and substance to the Regional Administrator, to establish that applicable Federal requirements have been met.

B. Except as otherwise provided in this AGREEMENT or any Appendices hereto, the Regional Administrator shall accept these Certifications unless he determines that the State has failed adequately to establish the basis for its certification.

C. Detailed requirements concerning these Certifications, checklists, or other documentation shall be set forth in the Appendices to this AGREEMENT, as appropriate.

8. Limitations on Delegations

A. Notwithstanding any other provision of this AGREEMENT or any Appendices hereto, the Regional Administrator shall retain responsibility and primary authority for the following:

1. award of Step 1, Step 2, Step 3, and Steps 2 + 3 grants, and amendments thereto;

2. independent review and determination of projects for which Environmental Impact Statements will be required pursuant to the National Environmental Policy Act of 1969, 42 U.S.C. 4321, and the preparation and issuance of such statements or of negative declarations required pursuant to Part 6 of Chapter 1, Title 40 C.F.R.

3. civil rights determinations, and enforcement, related to the Civil Rights Act of 1964 and Executive Order 11246;

4. final dispute determinations pursuant to 40 C.F.R. §35.960;

5. determinations of protests pursuant to 40 C.F.R. §35.939;

6. review of construction grant audit exceptions for proper resolution;

7. determination that an overriding Federal interest exists in a particular project which requires greater Federal oversight or participation. The making of this determination, which need not be in writing, shall not relieve the State of any of its responsibilities under this AGREEMENT or any Appendices hereto;

8. final determinations under Federal statutes other than the Clean Water Act; and

9. any Title II Program functions and responsibilities not specifically delegated to the State by EPA under this AGREEMENT.

B. Whenever a protest is filed under 40 C.F.R. §35.939, the protest shall be handled in the manner provided for in such Section and the parties hereto shall perform their customary functions thereunder. It is understood that the Division shall comply with any deferral of procurement action arising out of such process and shall comply with the terms of any final decision made by the Regional Administrator.

9. EPA Reviews

A. EPA may conduct such periodic reviews of the Division's records and activities as EPA determines necessary to ensure that the State's expenditures under a CMAG are directly related to and reasonably incurred in the performance of Title II Program functions and responsibilities delegated under this AGREEMENT and any Appendices hereto. Generally, such reviews shall be performed on a semi-annual basis, provided that EPA may conduct these reviews more frequently if it determines it to be advisable.

B. Each Appendix to this AGREEMENT shall provide for periodic review of the Division's performance of its delegated Title II Program functions and responsibilities and shall define the scope, method, and frequency of these reviews.

C. Within thirty (30) days of the completion of each periodic review, EPA shall provide the Division with a written report outlining the results of EPA's findings. If deficiencies in the Division's performance are noted in these reports, the Division shall, within thirty (30) days of the receipt of EPA's report, advise EPA in detailed writing of the actions which the Division has taken or will take to correct the identified deficiencies.

This response shall also include a timetable for the taking of those actions necessary to correct any such deficiencies.

10. Term of Agreement

This AGREEMENT shall take effect upon execution by both parties hereto and shall remain in effect for a period of five (5) years. The parties may, by written Amendment hereto, extend the term of this AGREEMENT, provided, however, that the term may not be extended to more than five (5) years beyond the date of any CMAG.

11. Negotiation of Appendices; Execution

The Director of the Water Division, EPA Region III and the Chief, Division of Water Resources are hereby authorized to negotiate and execute all Appendices to this AGREEMENT on behalf of EPA and the State.

12. Amendments

A. This AGREEMENT and any Appendices hereto may be amended, in writing, at any time as the parties may agree. The Director of the Water Division, EPA Region III and the Chief, Division of Water Resources are hereby authorized to execute any amendments to this AGREEMENT and any Appendices hereto, on behalf of EPA and the State.

B. Any CMAG funding adjustments which are necessitated by any amendments to this AGREEMENT or any Appendices hereto shall be reflected in amendments to the CMAG.

13. Termination

A. Delegation Agreement

1. This AGREEMENT may be terminated by mutual agreement or by either party, provided that one-hundred eighty (180) days prior written notice of intent to terminate is given by the party initiating the termination action. The party receiving said notice of intent may, however, request an extension to this notice period, said extension not to exceed an additional one-hundred eighty (180) days, provided that written notice of such extension

is provided within thirty (30) days of the receipt of the notice to terminate.

2. The parties may, by agreement, in writing, modify the termination period described in paragraph 15.A.1. above.

3. Notwithstanding any other provisions of this AGREEMENT or any Appendices hereto, notice of termination of this AGREEMENT shall serve as notice of termination of all Appendices hereto. All such Appendices shall terminate upon the effective date of the termination of this AGREEMENT.

4. In the event the State fails to meet the level of maintenance requirements of paragraph 4 (level of program effort) above, then, notwithstanding any other provisions of this AGREEMENT or any Appendices hereto, this AGREEMENT and all Appendices hereto shall terminate on the last day of the last fiscal year during which said level of maintenance requirements were met by the State.

5. Notwithstanding any other provision of this AGREEMENT or any Appendices hereto, the audit, record maintenance, and access to records provisions of paragraph 5 (recordkeeping, accounting procedures, audit) above, shall remain in effect upon termination of this AGREEMENT and the Appendices hereto.

6. A Notice of Intent to terminate this AGREEMENT shall be sent by certified mail, return-receipt requested, to the Governor of the State of West Virginia or the Regional Administrator, as appropriate. Neither the Governor nor the Regional Administrator may delegate his authority to terminate this AGREEMENT.

B. Appendices

1. Should EPA determine, based upon a review(s) performed pursuant to paragraph 9 (EPA Reviews) above, or otherwise, that the Division performance under any Appendix to this AGREEMENT is not acceptable, EPA shall so advise the Division in writing. Upon being so advised, the Division shall have a period

not to exceed one-hundred twenty (120) days to correct any and all deficiencies identified by EPA. If at the end of this period EPA determines that the Division's performance is still not acceptable, EPA may terminate the relevant Appendix, in full or in part, upon ninety (90) days written notice to the Division, unless otherwise provided in said Appendix.

2. Notwithstanding any other provisions of any Appendices to this AGREEMENT, those provisions dealing with audit, record maintenance, and access to records shall remain in effect upon the termination of the relevant Appendix.

3. The Director of the Water Division, EPA Region III is hereby authorized to terminate any Appendix to this AGREEMENT on behalf of EPA.

C. Costs Unallowable

No costs incurred by the State under this AGREEMENT or any Appendices hereto shall be allowable under a CMAG or any other form of Federal assistance after the effective date of the termination of this AGREEMENT or any Appendices hereto, as appropriate. Any CMAG funding adjustments necessitated by any such termination(s) shall be reflected in an amendment to the CMAG.

D. EPA-State Cooperation

In the event that this AGREEMENT or any Appendices hereto are terminated, the parties agree to cooperate fully in the orderly transfer of delegated functions from the State to EPA.

16. Public Participation

All delegated Title II Program functions and responsibilities shall be conducted in full compliance with all applicable Federal public participation requirements.

17. Assignments

The Division shall not assign, either in whole or in part, its interest in this AGREEMENT or any Appendices hereto. Furthermore, the Division shall not contract for resources to conduct any delegated Title II Program functions and responsibilities without the prior written approval of EPA.

18. Use of EPA Forms

All forms used by EPA in connection with the Title II Program, including application forms, project review checklists, and form letters shall be used by the Division in its performance of delegated Title II Program functions and responsibilities, unless otherwise provided in any Appendices to this AGREEMENT or unless EPA has agreed in writing to the Division's use of alternate forms. EPA may, in its discretion, revise any such forms. Upon being advised that a form has been revised, the Division shall begin using the revised version promptly.

19. Citizen Request for Regional Administrator Review

Pursuant to 40 C.F.R. §1033(e), nothing in the terms of this AGREEMENT shall be deemed to preclude interested citizens who have been adversely affected by a decision or omission of the Division under this AGREEMENT or any Appendices hereto, from requesting the Regional Administrator to review or investigate the circumstances resulting in the Division's decision or action. The Regional Administrator will respond promptly to written complaints and will hold a public meeting if he considers it appropriate.

20. Early Notice of Problems; Periodic Discussions

The Division shall notify EPA of any significant problem arising during the management of the Title II Program which materially affects EPA's interests as soon as it comes to the attention of the Division so as to facilitate joint action by EPA and the Division in resolving such problem. In order to maximize the benefits of this AGREEMENT and to work out procedural and other problems, the Regional Administrator and the Chief, Division of Water Resources, or their designees; shall meet from time to time at a mutually convenient place to confer.

21. Aggrieved Applicants and Grantees; Right of Review

An aggrieved applicant or grantee may request the Regional Administrator to review findings, recommendations and certifications made, and actions taken by the Division under this AGREEMENT and any Appendices hereto, provided that such request is made within fifteen (15) days after such aggrieved applicant or grantee is informed of such findings, recommendations, certifications, or actions. The Regional Administrator may also review such findings, recommendations, certifications, and actions on his own initiative. The Regional Administrator's final decision in such matters may be appealed by the applicant or grantee as provided in 40 C.F.R. §35.1050.

22. Disputes

1. Whenever a dispute shall arise between EPA and the Division as to any matter covered by this AGREEMENT or any Appendices hereto (other than a dispute pertaining to a CMAG), after appropriate consultation and review of all pertinent facts, EPA's determination shall be the final administrative action on the matter.

2. Whenever any dispute shall arise between EPA and the Division relating to a CMAG, the Regional Administrator's determination shall be final and conclusive, subject to the Division's right to appeal such determination under 40 C.F.R. §35.1050.

23. Public Access to Records

All grant applications, records, reports, and other documents in the possession of the Division which are a part of an official grant file or otherwise a part of the administrative record of a grant decision, shall be made available by the Division to members of the public, consistent with those provisions of State law respecting the public availability of such documents.

24. Congressional Inquiries

From time to time as such inquiries are received by EPA, the Division shall cooperate with EPA in providing reasonable responses to Congressional inquiries, including providing copies of documents, factual material and other information within a time frame which is consistent with EPA's policy and practice of priority response to such inquiries. EPA shall endeavor to refer such inquiries directly to the Division whenever a matter is directly or exclusively within the Division's purview.

25. Authority

This AGREEMENT has been executed by EPA pursuant to the provisions of S205(g) of the Act and regulations promulgated thereunder (40 C.F.R. §§35.100 et seq.) and is subject to the provisions thereof. The State's authority to execute this AGREEMENT is derived from the West Virginia State Code, Chapter 20-5A-4.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY	STATE OF WEST VIRGINIA
BY:____________________ Regional Administrator	BY:____________________ Governor

TO: April 11, 1984 Meeting Participants

FROM: Ralph Goolsby and Tom Goodwin

DATE: April 13, 1984

SUBJECT: Elk-Pinch Public Service District Sewerage Project

Pursuant to the agreement of the meeting held April 11, 1984 the attached report represents a summary of actions and a synopsis of the proposal presented to resolve the Elk-Pinch financial dilemma. This report provides a general summation of relevent facts and issues presented at the meeting. Included in this report is an operative budget, solely for illustrative purposes, developed in accordance with the parameters of the proposal.

This report is intended to provide an overview of the various elements comprising the proposed resolution. Actual implementation of this resolution will require definative action by the various participants in the Elk-Pinch sewerage project.

ELK-PINCH PUBLIC SERVICE DISTRICT RESOLUTION/PROPOSAL

Meeting: April 11, 1984

ELK-PINCH PSD PROPOSAL/RESOLUTION OF DEFICIT FINANCING

In December 1983, the Commissioners of the Elk-Pinch Public Service District issued a stop work order to cease construction of its $22.6 million sewerage treatment project. At that time, it was the belief of the Public Service District Commissioners that the PSD was in default of its construction notes resolution. Since that date, actual project cost and actual deficit have been identified.

Since December 1983, a series of meetings involving various federal, state and county officials and the Commissioners of the PSD have occurred to discuss and to seek an opportunity to resolve the financial dilemma that the Elk-Pinch PSD is currently facing.

On April 11, 1984, a meeting was held at the Capitol to discuss the possible financial resolution of the Elk-Pinch project. Enclosed herein is the highlights of that meeting and the proposed resolution. The resolution submitted herein deals specifically with the restart of the construction and no consideration is given to those outstanding legal issues that may occur.

PARTICIPANTS AND ATTENDANTS

The following list includes those participants and attendants of the meeting of April 11, 1984.

Baker Watts & Company - Thomas Yeager

Cecil & Barth - J. David Cecil
Bill Roberts

Congressman Bob Wise's Office - Libby Squire

Elk-Pinch PSD - Ed Hafer
Walter Jarrett

EPA - Ray George

GOECD - Miles Dean
Ralph Goolsby

Health Department - Russ Rader
Bob Wheeler

Kanawha County Commission - Bernie Clark
F. Douglas Stump

Kelly, Gidley, Blair & Wolfe - Tom Blair
Jim Downey

Natural Resources - Tom Goodwin
Warren Means
Ron Potesta
Ron Shipley

News Media - Daily Mail: E. Bartlett
Gazette: Martin Berg

Public Service Commission - S. H. Dickson
R. P. Gerke
David Hippchen

Water Development Authority - Ed Henry

PROJECT COSTS

One area of controversy throughout this stop work period has been the actual cost of the project including construction and the interim cost of financing. It was agreed that the Elk-Pinch PSD project cost information of April 9, 1984 as prepared by Kelley, Gidley, Blair & Wolfe, Inc. indicating that the current projected cost of $23,930,200 will be the final construction cost. This cost analysis was accepted by the consulting engineer, Kanawha County Commission, the Third Congressional District's staff person, Commissioners of the PSD, and other participants of the meeting.

It was further agreed that Kelley, Gidley, Blair & Wolfe would stand behind those numbers to the degree that any unprocessed, outstanding payments owed to Kelley, Gidley, Blair & Wolfe would be held until after construction has been completed and the $23,930,200 construction cost has been affirmed. It should be further noted that the costs include work outstanding and start-up costs to contractors. Kelley, Gidley, Blair & Wolfe agrees to guarantee the $23.9 million construction based upon the currently approved scope of work at the project. The costs are broken out per line item in Exhibit A*.

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* For detailed supporting documentation, please refer to "Elk-Pinch Public Service District Project Cost Information" dated April 9, 1984.

EXHIBIT A

ELK-PINCH PUBLIC SERVICE DISTRICT
PROJECT COST INFORMATION

April 9, 1984

	Original PSC (1)	Revised PSC (2)	Current (2)
Project Costs			
Construction	$ 17,642,387	$ 17,872,632	$ 16,672,744
Technical Services	1,450,400 (3)	1,450,400 (3)	2,181,371
Legal/Administrative/Cost of Issuance	175,994	175,994	573,006
Land/Easements	300,000	300,000	630,528
WDA Loan Repayment	247,727	247,727	247,728
Engineering Peer Review	14,638	14,638	10,407
Capitalized Interest	1,463,750	1,233,170	2,960,000
Discount	248,838	231,515	238,667
Video Taping	-0-	-0-	37,359
Project Administration	-0-	-0-	65,600
Contingency	1,000,000	769,755	312,790
TOTAL	$ 22,543,734	$ 22,295,831	$ 23,930,200

(1) Rate - 5.25/1,000 Gallons Water Usage

(2) Rate - 4.26/1,000 Gallons Water Usage

(3) PSC Rule 42 stated engineering costs at $1,450,400. Actual contract amount at time of Rule 42 was $1,512,400.

Prepared By: Kelley, Gidley, Blair & Wolfe, Inc.

SOURCES OF REVENUES

It is believed and accepted as per the Kelley, Gidley, Blair & Wolfe project cost information submitted to the Elk-Pinch PSD April 9, 1984 that the current funds available for the project including all federal, state and county sources and a projected tap fee will create $22,630,200 for the completion of this project.

If these figures are acceptable, the Elk-Pinch PSD will need an additional $1,300,000 to complete its $23,930,200 project. It was generally agreed upon by the attendees of this meeting that the figures, as submitted, and expressed will complete the project that is currently being undertaken by the PSD.

The source of funds breakout is identified as Exhibit B*.

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* For detailed supporting documentation, please refer to "Elk-Pinch Public Service District Project Cost Information" dated April 9, 1984.

EXHIBIT B

ELK-PINCH PUBLIC SERVICE DISTRICT
PROJECT COST INFORMATION

April 9, 1984

Sources of Funds	Original PSC	Revised PSC	Current
WDA Bond Issue (Net)	$ 5,855,000	$ 4,460,509	$ 4,460,000
Grants:			
EPA	14,250,705	14,250,705	13,042,418
WDA	700,000	700,000	700,000
Kanawha County	700,000	700,000	755,000
ARC	400,000	400,000	400,000
Tap Fees	405,000	405,000	390,410
Estimated Interest to be Earned on Capitalized Interest	233,025	229,979	495,000
Interest Earned - Construction Notes	-0-	-0-	2,387,372
TOTAL	$ 22,543,734	$ 22,295,831	$ 22,630,200
Deficit	-0-	-0-	($ 1,300,000)

Prepared By: Kelly, Gidley, Blair & Wolfe, Inc.

CUSTOMER COUNT

Throughout the construction phase of the Elk-Pinch Public Service District sewerage system, there has been considerable question as to the number of potential users of this system. It was reported by the Public Service Commission that an actual field count is occurring. This field count is to verify a computer printout prepared by the consulting engineer relative to the number of customers and converting that number of customers into potential users. As of April 11, 1984, the Public Service Commission reported that one construction contract had been field surveyed and no discrepancy was found. Two additional construction contracts are, currently, being field surveyed and it appears that the accuracy of the computer lists against that of the field survey is approximately 95%. It is the opinion of the Public Service Commission that the field survey will not deviate greater or less than 5% of the computer sheets listing customers. The Public Service Commission had earlier reported that it was reasonable to believe that the Elk-Pinch PSD may anticipate 2,729 customers and realizing that some of those customers will have multiple users, this number will generate approximately 3,100 initial users to the system. It was generally agreed upon that the 3,100 users would be acceptable by the PSD, the County Commission, the Third Congressional District office and other participants of the meeting.

WATER USAGE

It is believed that the water usage analysis used in the preparation of the Rule 42 is approximately six years old. It was agreed upon by the members of the meeting that a typical household in the Elk-Pinch PSD will use approximately 5,000 gallons of water per month. For purposes of calculating revenues and resolving the financial dilemma that the PSD now faces, it was agreed upon by the PSD, County Commission, and the Third Congressional District office and other meeting participants that a typical household water user is approximately 5,000 gallons per month.

TAP FEES

As expressed in Exhibit B, it is reasonable to believe and generally accepted by all participants that the Elk-Pinch PSD will receive at least $390,410 in tap fees.

OPERATION AND MAINTENANCE

The operation and maintenance schedule originally proposed under the Elk-Pinch PSD Rule 42 indicated that the first year's operation cost would be approximately $213,066. This cost was based upon the RBC treatment plant. As a result of the change in the treatment process and additional personnel proposed, the operation and maintenance costs may increase up to $273,000 its first year. It was generally agreed upon by the County Commission, the PSD and the Third Congressional office that the higher O&M cost of $273,000 could possibly be reduced in two areas: 1) the elimination of a General Manager and 2) the fringe benefits cost associated with the General Manager.

In lieu of a General Manager and fringe benefits, it was generally agreed upon by the above mentioned parties that the consulting firm of Kelley, Gidley, Blair & Wolfe be given an extended start-up contract and that the 75% of the start-up contract services be picked up by an amended EPA grant. The concept was accepted by the EPA representative to the State and its concept agreed upon by DNR. Therefore, it is possible to reduce the operation and maintenance costs from $273,000 level to approximately $240,000 level. It was further agreed upon that if the EPA would provide the 75% funds for the first year's extended start-up services contract with Kelley, Gidley, Blair & Wolfe that the County Commission would provide the 25% match to that grant. This was agreed upon in principle by all parties. Enclosed is Exhibit C which shows the original operation and maintenance costs and the revised operation and maintenance costs including a General Manager and fringe benefits relative thereto.

EXHIBIT C

ELK-PINCH PSD
COMPARISON OF ORIGINAL (RULE 42) O&M COSTS TO REVISED O&M COSTS

APRIL 9, 1984

ITEM	ORIGINAL	REVISED	DIFFERENCE
1. Payroll	$ 75,200	$ 100,000	$ 24,800
2. Pump Station Power	25,100	22,000	(3,100)
3. Plant Power	18,500	31,250	12,750
4. Chemicals	6,700	4,500	(2,200)
5. Materials and Supplies	18,300	6,150	(12,150)
6. Other Utilities	4,944	6,020	1,076
7. Billing & Collecting	19,200	20,000	800
8. Transportation	11,962	8,270	(3,692)
9. Tools	-	500	500
10. Commissioners Fees	1,500	2,250	750
11. Legal and Audit	3,500	3,500	-0-
12. Rate Case Expense	5,000	5,000	-0-
13. Insurance	5,200	5,200	-0-
14. Administrative Supplies	1,000	3,000	2,000
15. General Manager	-	25,000	25,000
16. Payroll Fringe Benefits	17,560	30,750	13,190
	$ 213,666	$ 273,390	$ 59,724

REASONS FOR INCREASE/(DECREASE)

1. One additional operator required at plant
2. More efficient pumps
3. Increased horsepower requirement at plant. Amounts shown are for years 1-5. When second treatment unit is put into operation revised power cost will be $59,500 assuming no inflation. Original power cost on RBC plant would have remained the same.
4. Polymer cost was included in contract for one year supply.
5. Supplies decreased with package plant.
6. Utility costs have increased due to inflation.
7. Virtually same.
8. Reduced number of vehicles from 4 to 3
9. Tool requirement negligible.
10. Commissioners fees increased from $500/year to $750/year.
11. No change.
12. No change.
13. No change.
14. District has been buying supplies at rate of $250/month.
15. District desires (apparently) to employ a General Manager.
16. Increased due to payroll increases.

Prepared By: Kelley, Gidley, Blair & Wolfe, Inc.

PROPOSED RESOLUTION

April 11, 1984

WATER DEVELOPMENT AUTHORITY

The Water Development Authority believes that it is in a position to offer an additional $300,000 in grant monies to the Elk-Pinch Public Service District provided that the Elk-Pinch PSD increases its user rate to $4.39 a thousand or a $.13 increase per thousand. The $4.39 rate is necessary for illustrative purposes: a 4,500 gallon usage at $4.39 to generate a user rate of $19.75. The $19.75 figure is illustrative of the Water Development Authority grant process.

As a part of the WDA commitment to this project, it should be understood that the WDA as shown on the Sources of Funds, Exhibit B, has $4,464,000 in bond issued proceeds available for the Elk-Pinch PSD. This bond has a life expectancy that will be repaid over a 35 year period with an annual net interest of 10% and will require a 30% cover.

ELK-PINCH PUBLIC SERVICE DISTRICT

In order to cover costs of the additional operation and maintenance, the Elk-Pinch Public Service District must increase its user rate in order to receive an additional $300,000 from the Water Development Authority. It was generally agreed upon by the County Commission, the members of the PSD, and the Third Congressional District office that an increase of $.13 per thousand or increasing the user rate from $4.26 a thousand to $4.39 a thousand that the operation and maintenance costs could be covered as well as increasing the eligibility for Water Development Authority funds. Furthermore, in order to reduce its operation and maintenance costs, the PSD would give consideration to not having a General Manager but entering into a one year start-up services contract which would be EPA eligible for 75% and that the county would pick up the 25% match.

KELLEY, GIDLEY, BLAIR & WOLFE

It was agreed upon by the consulting firm, members of the Public Service District, the Kanawha County Commission and the Third Congressional District office that the consulting firm will not receive the balance of its payments of approximately $124,000 until the construction phase of the project is completed with a total construction cost of $23,930,200 as described in Exhibit A. It should be understood that any payments that are currently being processed for Kelley, Gidley, Blair & Wolfe will be paid, but no additional payments will be received thereafter.

PUBLIC SERVICE COMMISSION

It is the general belief of the Public Service Commission that the Elk-Pinch PSD may petition the Commission for a reopening of the PSD's Rule 42 and immediately start that process. It is also the belief of the Public Service Commission that the Elk-Pinch PSD may start its construction with a deficit in its financing, however, a plan for covering the deficit must be considered as a viable option. It is the belief of the Public Service Commission that the Elk-Pinch PSD may incur additional indebtedness as a result of construction which must go through the Senate Bill 95 process. The initiation of construction and the Senate Bill 95 process may possibly run concurrently.

KANAWHA BANKING & TRUST

It is the belief of the Kanawha Banking & Trust, depository bank for the Elk-Pinch PSD, that funds may be spent from the non-eligible cost account contingent upon a bond opinion. It is believed that a bond opinion rendering favorable to the PSD is eminent.

BAKER WATTS

Baker Watts, Inc., investment bankers, proposed to issue $1,460,000 in Series B or subordinate bonds for the Elk-Pinch Public Service District. The bonds would be marketed to provide $1,000,000 to defray a portion of the estimated construction deficit. Further, the bond issue would provide $460,000 to be placed in the reserve accounts which would satisfy the reserve required for the WDA bonds.

The monies deposited in reserve accounts would generate interest revenue to offset the annual debt service of $460,000 in Series B Bonds.

The total issue of the Series B Bonds shall be marketed with no associate issuanced cost to the Public Service District.

ELK-PINCH PUBLIC SERVICE DISTRICT

Annual Operations Budget

For informational purposes, the following data illustrates the annual operational budget based upon the elements of the proposed resolution discussed at the April 11, 1984 meeting.

Approval Assumptions

1. The typical per capita water usage in Elk-Pinch PSD is 5,000 gallons per month.
2. 3,100 system users represent the anticipated initial flow to the system.
3. The monies vested in the reserve accounts can generate interest income. The current interest on treasury bills is 12%. For analytical purposes, 12% interest was generally acceptable.
4. The Series B Bonds shall be issued at no expense to the Public Service District. $460,000 shall be placed in the reserve account to satisfy the WDA reserve requirement.
5. The Public Service District will increase rates to $4.39 per thousand and WDA will increase their hardship grant participation by $300,000 based on the increased user rate.
6. The Series B Bonds will provide $1,000,000 which covers the balance of the construction deficit.
7. The Series B Bonds will have a 20% coverage based or debt service.
8. The Series B Bonds will be marketed at a percentage interest rate to allow for an effective user rate of $4.39 per thousand gallons based on the construction cost and revenues and operation costs provided in the April 9, 1984 report issued by Kelley, Gidley, Blair & Wolfe.

PROPOSED SYSTEM REVENUES

$ 816,540	Sewer User Fees
55,200	Interest Income/Reserve Account
$ 871,740	Annual Revenues

PROPOSED SYSTEM COSTS

COST	PURPOSE
$ 460,000	Annual debt service on WDA bonds and low-interest loan
97,658	Annual debt service on $1,000,000 Series B Bonds issued at 9.45%
44,594	Annual debt service on $460,000 Series B Bonds issued at 9.45%
28,450	20% coverage on Series B Bonds. Coverage is based on debt service.
240,000	Operation and maintenance cost
$ 870,702	TOTAL

If this scenario occurs, the Elk-Pinch Public Service District will be able to cover the costs of the systems with its anticipated revenues. This is based upon a $4.39 per thousand user rate. It is agreed upon that the Series B Bonds will be issued without discount or associated costs of issuance to the Elk-Pinch PSD. It was further agreed upon that Baker Watts and Kelley, Gidley, Blair & Wolfe will support the Series B Bonds either by direct purchase or other agreed to mechanism.

This report is intended to provide an overview of the resolution proposed at the April 11, 1984 meeting of the concerned parties. The actual operational budgets are subject to variation dependent upon the resolution of specific issues including but not limited to: date of construction restart, variable interest rates, actual project costs at the conclusion of construction and legal constraints.

Mr. LEVITAS. I think we will hold our questions until we have heard from the USEPA official and, Mr. Longest, why don't you introduce the others with you.

Mr. LONGEST. Yes, sir. With me is Mr. Eichler, who is regional administrator for region III in Philadelphia, and to his right is Greene Jones, who is the director of the Water Division under Mr. Eichler, and then Mr. Dennis Carney, who is on the staff of Greene Jones in the Water Division specifically responsible for projects in the State of West Virginia.

Mr. LEVITAS. Mr. Eichler, how long have you been region III administrator?

Mr. EICHLER. Since July of last year.

Mr. LEVITAS. Were you previously in that regional office?

Mr. EICHLER. No, sir. I was director of environmental control for the State of Delaware prior to that.

Mr. LEVITAS. Thank you.

Mr. LONGEST. Mr. Chairman——

Mr. LEVITAS. Incidentally, Delaware is one of the places—wasn't it Wilmington—that we have used as an example of a successful wastewater treatment plant in our last report on this subject.

Mr. LONGEST. Mr. Chairman, I will summarize my statement but I think it is important to make a few remarks discussing the evolving role of EPA in the construction grants.

Mr. LEVITAS. Your entire statement, of course, will be made part of the record, without objection.

Mr. LONGEST. Thank you.

In the early years of the program, prior to 1974, EPA was main project reviewer and project decisionmaker. However, even during this period, grantees were required to certify as part of the grant agreement that they had the legal, financial and, management capability to complete and operate a federally funded project.

In the midseventies, EPA solidified its regulatory and policy program. During this time EPA clearly began to take responsibility for elements of the process over to the state and local governments. This includes measures to assure the grantees were fulfilling their responsibilities to effectively manage and complete projects.

Since the late 1970's, and continuing through today, a third phase of the program has been underway. Through our action since about 1978, EPA is now primarily in the role of overview program manager, and with most review and decisionmaking functions, clear the responsibilities of the States and grantees.

In addition, over the past several years EPA has also been able to rely on the Corps of Engineers in some projects.

All of this has happened as part of a deliberate decision by EPA to delegate programs to State governments. For construction grants this means that States exercise EPA authority in working with individual projects, and responsible for overseeing grantees' compliance with their responsibilities.

Throughout this process, however, EPA has been and remains ultimately responsible for the construction grants program.

One particular policy issue that EPA has worked on extensively in recent years, primarily because of our concern with the smaller communities, is financial capability.

EPA efforts to deal with this issue are directed at assuring the grantees certifications of financial and management capability provide a real indication of the community's ability to successfully complete and operate the project.

Our regulations now require a demonstration of financial capability before a grant is made.

A prospective grantee is required to address a series of questions and certify in writing that they have analyzed the cost and financial impact of the facility that they are constructing.

To comply with the regulations published in the Federal Register on financial and management capability, delegated States must develop screening procedures to identify communities which may need greater attention because of high costs or potential impact to the community.

I hope this brief statement has answered some of our your questions and given you a better understanding of the evolving role of EPA in the program. We would be happy to answer questions.

[The statement of Mr. Longest follows:]

STATEMENT OF HENRY L. LONGEST II, DIRECTOR, OFFICE OF WATER PROGRAM OPERATIONS, U.S. ENVIRONMENTAL PROTECTION AGENCY

Good morning Mr. Chairman and members of the subcommittee. Before Tom Eichler discusses in some detail the two West Virginia projects which are the focus of this hearing, I wanted to make a few remarks of my own, discussing the evolving EPA role in the construction grants program, particularly as it relates to small communities.

In the early years of the program—prior to 1974—roles and responsibilities of the various participants were not always clearly defined. EPA had little in the way of regulations, and on national policy or procedures for its review of projects. There was little State involvement, and even the grantees' responsibilities were not clearly defined. In these early years there was a tremendous reliance on the judgment of the consulting engineer to see that the job was done properly. During this period EPA was the main project reviewer and project decisionmaker. However, even during this period, grantees were required to certify as part of the grant agreement that they had the legal, financial and management capability to complete and operate federally funded projects.

In the mid 1970's EPA solidified its regulatory and policy program. More comprehensive procurement and program regulations were issued. Detailed project review instructions in the form of a "Handbook of Procedures" became available. And, as individual program policy questions arose, a series of Program Requirements Memoranda (or PRMs) was issued. All of this helped in clarifying the roles and responsibilities of EPA, the State, the grantee, and the consultant. During this time EPA clearly began to turn responsibility for elements of the process over to State and local governments. This included measures to assure that grantees were fulfilling their responsibilities to effectively manage and complete projects.

Since the late 1970's, and continuing through today, a third phase of the program has been underway. Through our actions since about 1978, EPA is now primarily in the role of overall program manager; with most review and decisionmaking functions clearly the responsibility of the States and grantees. During this time EPA has issued two major revisions to its regulations, so that today they include only provisions required by law and those minimum additional requirements necessary for effective management. We have refined our policy and guidance documents, issuing EPA policies on such matters as financial capability, and provided a comprehensive step-by-step walk through of the process for grantees in our guidance document entitled "Construction Grants 82." Over the past several years EPA has also been able to rely on extensive Corps of Engineers involvement in project management, handling such activities as bidability and constructability reviews, as well as interim and construction management evaluations.

All of this has happened as part of a deliberate decision by EPA to delegate programs to State governments. For construction grants this means that States (with assistance from the Corps of Engineers) exercise EPA's authority in working with individual projects, and are responsible for overseeing grantees' compliance with their responsibilities. Including Corps of Engineers support, 38 States will have fully delegated programs by the end of FY 84. At this time, EPA is functioning primarily in the area of program management and oversight, monitoring State performance and performing non-delegable Federal functions. Throughout this process however, EPA has been, and remains, ultimately responsible for the construction grants program.

One particular policy issue that EPA has worked on extensively in recent years, primarily because of our concern for the smaller communities, is financial capability. EPA's efforts to deal with this issue are directed at assuring that grantee's certifications of financial and management capability provide a real indication of the community's ability to successfully complete and operate the project. The principal thrusts of these efforts are: (1) focusing extra attention on financial capability and providing detailed guidance in order to make certain that grantees' certifications are meaningful, and (2) identifying potential problem projects so that available expertise can be used to assist in situations where the need is the greatest.

Our regulations require a demonstration of financial capability before a grant will be awarded. The prospective grantee is required to address a series of questions and certify in writing that they have analyzed the costs and financial impacts of the facilities and are capable of meeting them. In addition, the regulations address the issues of user charge systems and intermunicipal service agreements.

To complement these regulations we have published in the Federal Register a "Financial and Management Capability Policy" which provides guidance on how to fulfill the regulatory requirements. In addition, it directs delegated states to develop screening procedures to identify communities which may need greater attention because of high project cost or potential financial impact.

Taking the regulation and policy one step further, we have pursued a number of implementation actions to assist grantees and States. We have published a Financial Capability guidebook and Summary Foldout which provide guidance for conducting a financial capability analysis. We have provided guidance for implementing the user charge system requirements, including a User Charge Manual and Financial Management System Guidance. Finally, we are sponsoring State financial capability workshops that train state and community staff on how to conduct a financial capability analysis. By the end of this fiscal year 14 such workshops will have been held. Coincidentally, one of these workshops is being held today in West Virginia.

I hope this brief statement has answered some of your questions and given you a better understanding of the evolving EPA role in the construction grants program. I would be happy to join Tom Eichler in responding to any additional question after he has made his remarks.

Mr. **Eichler**. I, too, will summarize my remarks.

[The statement of Mr. Eichler follows:]

STATEMENT OF THOMAS P. EICHLER, REGIONAL ADMINISTRATOR, U.S. ENVIRONMENTAL PROTECTION AGENCY

Good morning Mr. Chairman and members of the subcommittee. I am Thomas Eichler, Regional Administrator for the Middle Atlantic States of the Environmental Protection Agency. My responsibility is to administer with my State colleagues in Pennsylvania, West Virginia, Maryland, Virginia, Delaware, and the District of Columbia, the many Federal environmental programs administered by EPA. These include the construction grants program authorized by the Clean Water Act. I am pleased to have the opportunity to appear today to discuss two wastewater treatment systems in Kanawha County, West Virginia—the completed system of the Malden Public Service District [PSD] and the almost-completed system of the Elk Pinch PSD. I will also discuss some of the lessons we have learned which will help us avoid the problems encountered in these communities. Accompanying me today are Greene A. Jones, Director of the Regional Office's Water Management Division, and Dennis Carney, our senior project manager for West Virginia.

I would like to discuss the status of the two projects, the problems they encountered as participants in the construction grants program, and actions taken, and under consideration by EPA to reverse the regrettable circumstances facing Malden and Elk Pinch.

RESPONSIBILITIES OF FEDERAL, STATE, AND LOCAL GOVERNMENT

It is important to consider my remarks in the context of Henry Longest's discussion of the evolving roles and responsibilities of EPA, the States and our grantees in implementing the construction grants program. I will make reference to specific responsibilities for individual decisions made for the Elk Pinch and Malden projects, and will be pleased to respond to questions on these matters. I would only point out at this time that progressive delegation of responsibility to West Virginia took place during the years when important decisions were made concerning the two projects; it is therefore likely that some decisions were made or reviewed by EPA, and others by the State. Having said this, I do not wish to imply that delegation of administrative responsibilities to the State in any way reduced EPA's responsibility to guide and evaluate the State's performance; delegation to States in no way reduces the quality of project oversight. Rather, it shifts the government organization that our grantees work with to the State, which is much closer to the project and is therefore better suited to serve the needs of local communities. West Virginia has now been delegated all aspects of program administration except final inspections, processing payment requests, and certifying and preparing basic grant documents.

I would also like to point out to the Subcommittee the rather limited role played by EPA in reviewing financial management plans, including the development of local share and setting of user charges. In West Virginia, the primary agency responsible for reviewing financing and setting user charges is the Public Service Commission. Because of the Commission's special expertise and legal authority in this area, EPA and the West Virginia Department of Natural Resources generally do not dispute its decisions.

I would now like to turn my discussion to the Elk Pinch and Malden projects in Kanawha County, West Virginia.

ELK-PINCH PUBLIC SERVICE DISTRICT

The Elk Pinch project is a gravity sewage collection system flowing to a 1.4 mgd treatment plant. The Step 3 grant for actual construction was awarded by EPA in September 1979, with construction subsequently scheduled for completion in September 1984. The current estimated project cost is $23.9 million. EPA's grant contribution, which is limited by law to 75 percent of the eligible cost, is $12.9 million. EPA also administers a $400,000 grant from the Appalachian Regional Commission. Other non-local sources of funds are the West Virginia Water Development Authority, which has committed $1 million, and Kanawha County, which is providing $755,000.

The Elk Pinch project proceeded through the facility planning and design phases under EPA's grants program with no substantial dispute over its basic design features. Because it was not clear whether the construction of a treatment plant or conveyence to Charleston was more cost effective, a decision by EPA on the funding of a treatment option was deferred in order to allow the PSD to conduct additional engineering analyses. Controversy over projected user charges developed in early 1981 when the PSD sought establishment of its rate from the West Virginia Public Service Commission; this coincided with the start of operations at the nearby Malden PSD facility. An inquiry was conducted by the EPA Office of Inspector General, and the IG's report raised important and helpful questions about design alternatives, the need for additional peer review, the PSD's financial and management capabilities, and the availability of easements. The EPA Regional Office evaluated each of the IG's points to the IG's satisfaction and concluded that the PSD should be authorized to award its construction contracts. It was believed that the responses developed justified proceeding with construction, as the PSD and State clearly desired. It is now obvious that conclusions reached in 1981 by the PSD, its professional consultants, the State and EPA overestimated the capability of the PSD to control some non-grant eligible costs and to properly manage a complex financing plan. It is the consequences of the PSD's subsequent mangagement difficulties that have been continuously addressed by all concerned, and to which an acceptable solution is now sought.

Construction was approximately 90 percent complete when the PSD stopped work in December 1983—without notifying EPA or receiving EPA's concurrence, as the basic grant agreement requires. The PSD subsequently explained that it stopped work after discovering a significant deficit in the account intended to secure money owed to its bond holders. Although EPA understands that work is continuing to develop an alternate financial management plan, we have not received any assurances that the PSD has arranged to eliminate the deficit. We further understand that construction may be resumed by the PSD as soon as it works out an acceptable arrangement for continued engineering services from its current or an alternate consulting engineer.

I want to emphasize that the Environmental Protection Agency strongly supports completing the project so that the system can become operational as soon as possible. Our reason for this position is simple and relates directly to the Agency's decision to award the grant in the first place: to abate a public health hazard in the Elk Pinch community and improve the quality of life for its residents.

While we encourage the PSD to pursue all reasonable steps to complete construction, it would not be responsible for it to do so without first eliminating the financial deficit that led to the stoppage and which, if it continues, threatens the long term financial and performance integrity of the treatment system. In our March 8, 1984 letter to the PSD we outlined the information which EPA requires for resumed construction under the grant agreement. Areas covered in the letter, which has been partially answered by the PSD, were financial planning, security of records and assets, operational planning, project administration and project engineering. I continue to believe that the requirements outlined in the letter constitute sound, practical advice to the PSD and are basic to EPA's overall management responsibility, as stewards of the national construction grant program, to protect a substantial public investment.

EPA recognizes that the Elk Pinch PSD, in a small community, has faced some special difficulties in carrying out the complex requirements of its grant agreement. Our staff has devoted much time to assist the PSD, including participating in numerous meetings in the community, to provide our best advice on overcoming the financial problem it faces. EPA has arranged, in cooperation with the West Virginia Department of Natural Resources, for a municipal financial management expert to analyze the PSD's special circumstances and propose an alternative financing arrangement which would allow completion of the project without significantly adding to the residents' user charges. I believe it would be useful to point out, since it is often misunderstood, that the Clean Water Act authorizes Federal grant participation for 75 percent of a project's eligible costs. For many projects, including Elk Pinch and Malden, noneligible costs—such as right-of-way acquisition—constitute a substantial portion of overall project costs.

We are also evaluating a request for additional grant funding which the Elk-Pinch PSD may use to cover legal, technical, and administrative costs incurred by the District in litigating contract claims. The PSD has been advised that additional information is required to complete our review of the request. We are also in discussio with the PSD about the grant eligibility of special engineering services which may be important during the first year of operations. I want to assure the subcommittee that EPA will continue to provide our best advice to the Elk-Pinch PSD, both during the remainder of the construction phase and after operations begin. We will also promptly review and process all required documentation associated with both phases. Finally, we will certainly provide, with the State's concurrence, all possible grant assistance eligible under the Clean Water Act.

It is apparent that the most significant problems facing the project stemmed from (1) unanticipated cost overruns in non-grant eligible categories (e.g., additional engineering services, right-of-way acquisition) and (2) development, implementation and monitoring of its complex financial plan. Financial planning and management are difficult parts of any wastewater treatment project, and are probably more burdensome for small communities which choose to engage in arbitrage techniques with local share funds for substantial portions of needed revenue. While arbitrage has been used successfully for a number of other West Virginia projects, financial management under these circumstances requires special attention from persons who are experienced in accounting and arbitrage. Although the PSD has been under contractual agreements with a number of firms who were in a position to provide this special capability, it is apparent that identification and delegation of these important responsibilities were not properly monitored. As a result, the careful management required was not performed, resulting in a loss of control over the rates of expenditures and arbitrage income. Because of the dependence of the project's financing on the arbitrage income, the absence of control led to a delayed discovery of the significant local deficit.

I have given considerable thought to whether or not more frequent communication among the PSD, State, and EPA since award of the grant in 1979 would have prevented the overruns in ineligible categories or the inadequate financial management. It is not at all clear to me that such additional attention by EPA and the State to the day-to-day affairs of the PSD would have been crucial. Because it is the grantee's responsibility to carry out the project, in the absence of obvious misrepresentation or indications of fraud, we do not replicate the detailed engineering and financial analyses performed by the grantee's consultants. As Henry Longest and I have already stated, the primary role of Federal and State oversight must necessarily be to ensure that grantees, supported by their professional consultants, develop and implement the projects. This places on EPA a heavy responsibility for providing guidance, training, review and auditing, but it is doubtful that more frequent oversight by EPA or the State would have prevented the problems encountered by the Elk-Pinch PSD.

I must point out to the subcommittee that the financial problems facing the Elk-Pinch PSD are of great concern to EPA for two reasons: the obvious, direct effect on the PSD, and the potential impact on development of local share financing for future construction projects in West Virginia. This statewide perspective adds to our determination to assist the Elk-Pinch PSD in completing and operating the project in a financially responsible manner. I would like to add that it is very important to consider postconstruction needs in evaluating alternate financial remedies, in order to prevent the current difficulties from plaguing environmental and financial performance when the collection and treatment system are placed in operation.

MALDEN PUBLIC SERVICE DISTRICT

I would now like to turn to the Malden Public Service District. This completed project consists of a gravity sewage collection system and 1.5 mgd treatment plant. The plant is a high rate pure oxygen (UNOX) activated sludge facility. There are approximately 3,600 customers and 12,600 people in the service area. The final project cost was $25.4 million, of which $16.5 million was provided by an EPA grant, $700,000 was granted by the West Virginia Water Development Authority, and $400,000 was provided by Kanawha County.

The facility has experienced operational and management problems from the outset of operations in late 1980. Specific difficulties which have not yet been fully overcome include exceedences of pollutant limitations as required by permit, backups of sewage into residential basements, hookups of roof and yard drains to the system, failure to connect all potential users, and failure to collect user fees from a sizable portion of the customers. These problems have resulted in a deficit in the operating budget and continuous customer complaints. It is clear that customer dissatisfaction, the inability to collect user fees, and poor plant performance are interrelated, forming what amounts to a vicious circle that must be broken.

Considerable attention has been given to identifying the primary cause or causes of the PSD's operational and management problems. Several diagnostic studies have been performed: by Loterpro Corporation, patent holder of the Unox treatment process; JRB Associates, an EPA contractor; Kelley, Gidley, Blair & Wolfe, Inc., who performed a peer review for the West Virginia Water Development Authority; and VTN, Inc., the PSD's design consultant.

These studies have reached various conclusions, ranging from inadequate performance by the understaffed plant operators to significant design deficiencies. Most have identified a combination of design and operational problems which are often made worse by flow surges during storms. Modifications to plant operating procedures and flow and treatment processes have resulted from each of these studies, and it appears that plant performance has improved significantly during the past year. I would be pleased to provide the Subcommittee with copies of each of these reports.

Responsibility for taking enforcement action to remedy violations of NPDES discharge permits was delegated to the State of West Virginia during the period of Malden's noncompliance. The reasons why EPA has not taken enforcement action under the Clean Water Act were (1) the continuing emphasis, as reflected in the reports just mentioned, on diagnosing the cause or causes of the plant's performance problems, and (2) the improving plant performance. Under these circumstances, we do not believe that acting in an enforcement mode would have been an effective way to improve plant performance.

EPA believes that progress made by the Malden PSD in the past year makes it appropriate that we provide grant funds for technical and legal costs incurred in litigating contract claims. We have also received assurances from the West Virginia Department of Natural Resources that it will become more directly involved in assisting the Malden PSD in its day-to-day operations.

We have met with leaders of the group of Malden citizens who believe that their boycott is an effective way to improve performance of the system. In the strongest possible terms, we have urged them to recognize that unless the PSD has sufficient revenue to properly operate, maintain and improve the system, the spiral of degraded performance and insufficient revenue will continue, to no one's benefit.

We are also concerned about the potential effect of Malden's financial difficulties on the viability of the West Virginia Water Development Authority's bonding program. The PSD received most of its local share of construction costs from a WDA bond issue. It is obvious that the marketability of this bond program directly affects the ability of many West Virginia communities to participate in the construction grants program. Without widespread participation, it is very unlikely that needed water quality improvements can be achieved in the State.

EPA INITIATIVES TO IMPROVE THE CONSTRUCTION GRANTS PROGRAM

Problem projects have forced the subcommittee and EPA to recognize that the system that works well for most communities does not necessarily work well for all communities. Special attention to small communities in particular has been increasingly recognized by EPA and the States as a key ingredient to the success of complex wastewater treatment projects. A number of fundamental initiatives have been developed in recent years, primarily aimed at identifying potential problem projects during early stages in their development and requiring our grantees and their professional consultants to fully evaluate a full range of lower cost, less centralized alternatives.

Henry Longest's testimony discusses in detail the Agency's new policy on grantee financial and management capabilities. I believe that this policy will strengthen the ability of EPA and the States to screen projects and assist communities, expecially during early project stages.

I would like to add a few words about another Agency policy initiative which is aimed at assisting small communities that participate in the construction grants program. Consistent with conclusions and recommendations made by this subcommittee, EPA has also increasingly required prospective grantees to evaluate a fuller range of alternative wastewater collection and treatment schemes. This is especially important for small, rural communities, where our experience has taught that conventional technology—typified by extensive gravity collection systems and energy-initensive actived sludge treatment plants—is often not appropriate. Systems that are simpler and less costly to operate include lagoons, oxidation ditches, trickling filters and land treatment, combined with pressure or small diameter gravity sewers; onsite systems, such as mounds, sand filters, alternating beds and low pressure distribution, are also being promoted as means to replace or upgrade failing septic systems in smaller communities.

Our staff has been working with our counterparts in State government, who often have more frequent contact with local officials and consultants, to encourage enthusiastic—not pro forma—implementation of both policies. The West Virginia Department of Natural Resources is well along in the process of developing the specific guidance to be used to assist its communities before their basic project decisions are made. I believe that there will be a considerable payoff to the Nation and its small communities for many years to come, as construction and operating costs are reduced as a result of these and related policies.

Of more direct benefit to West Virginia's small communities is a study conducted by EPA last year to identify their special problems and the actions which should be taken at all levels of government to improve the performance of the grants program. An important recommendation of this study is that the State should provide more "hands on" assistance to small communities and their consultants. EPA is working with the State to assure implementation of this recommendation. I would note that a cooperative effort of several State agencies—the Department of Natural Resources, Public Service Commission and the Governor's Office of Economic and Community Development—delivered a series of Public Service District training seminars in 1983 at convenient locations throughout the State. The State has scheduled followup sessions to reach additional communities and to reinforce the training for communities that are approaching key decisions in the grant program.

CONCLUSION

Mr. Chairman, I hope that my testimony and that of my colleagues is helpful to the Subcommittee in understanding what went wrong in two West Virginia communities and how EPA is attempting to assist them. I certainly regret the problems which have arisen in some communities that have participated in EPA's Construction Grant Program. I believe, however, that the basic structure of the program is sound and works well in the vast majority of communities; the problems experienced in Elk-Pinch and Malden do not indicate a failure of this basic structure.

I want you to know that EPA will do whatever we can—consistent with our responsibilities under the Clean Water Act—to assist both communities to make the best of the unfortunate circumstances. Cooperation and understanding will certainly be required by the citizens of both communities as well, and I hope that this hearing will contribute to this process.

I am confident that policies now in effect—policies which are consistent with the subcommittee's findings over a number of years—will greatly reduce the likelihood that other communities whose participation is more recent will not experience these problems.

My colleagues and I would be pleased to respond to any questions you may have.

Mr. **Eichler**. I want to make clear at the outset that, although progressive delegation of the Construction Grants Program to West Virginia took place during the years when important decisions were made for the two projects, EPA was the primary review agency throughout the period. Further, delegation of administrative responsibilities to a State does not in any way reduce EPA's responsibility to guide and evaluate the State's performance.

I would now like to turn my discussion to the Elk Pinch Public Service District. The PSD was formed under State law by Kanawha County, as a result of the community's petition to create a PSD to solve the growing public health hazard created by failing onlot septic systems. Mr. Chairman, I want to observe that despite the discussions about the sophisticated financial, management issues that surround the Elk Pinch project, there is a tendency to forget or neglect the simple fact that there is a significant health problem that must be promptly eliminated.

Controversy over projected user charges developed early in 1981 when the PSD sought establishment of its user charges from the West Virginia Public Service Commission. This coincided with the start of operations of the nearby Malden PSD facility.

During this time, as a result of local public interest, prior to construction, the EPA inspector general studied the Elk Pinch project. The IG's report raised important and helpful questions about design alternatives, additional peer review, financial and management capabilities, and the availability of easements.

The EPA regional office evaluated each of the IG's points to the IG's satisfaction and concluded that, with some improvements which we required as a result of the study, the construction should begin. The main improvements required of the PSD were hiring of a project coordinator and a CPA to improve financial and management control, and provision of a written certification from the project underwriters that local share financing was adequate to complete the project. I would add that the PSD and State clearly desired to proceed to construction at that time.

It is now obvious that all concerned parties, including the PSD, its professional consultants, the State, and EPA, overestimated the capability of the PSD to properly manage its financing plan and to control some nongrant eligible costs. While arbitrage with local share funds has been used successfully for a number of other West Virginia projects, such financial management requires special attention from persons who are experienced in accounting and arbitrage. Although the PSD has been under contractual agreements with a number of capable firms, as the GAO has reported, it is apparent that identification and delegation of these important responsibilities were not properly monitored. As a result, the required careful management was not performed, resulting in a loss of control over expenditures and income. This loss of control led, in turn, to a delayed discovery of the significant local deficit.

Construction was approximately 90 percent complete when the PSD stopped work in December 1983. The PSD took this action after discovering the significant deficit in the account reserved to secure money owed to its note holders. Although we understand that work is continuing by the PSD to develop an alternate financial management plan, we have not received any assurances that the PSD has arranged to eliminate the deficit.

I want to emphasize that the Environmental Protection Agency strongly supports completing the project so that the system can become operational as soon as possible. Our reason for this position is simple: to abate a locally recognized public health hazard in the Elk Pinch community. While we encourage the PSD to pursue all reasonable steps to complete construction, it would not be responsible to do so without its eliminating the financial deficit that led to the stoppage and which, if it continues, threatens the long-term financial and performance integrity of the treatment system.

To directly assist the PSD toward this goal, EPA and the State sponsored a special study by the Municipal Finance Officers Association. The study was completed in March of this year, and concluded that a substantial but not necessarily a majority of the local deficit resulted from the flawed financial plan and its implementation. All grant-eligible construction costs are within budget, but significant cost overruns in non-grant-eligible cost categories such as routine legal fees and land acquisition contributed to the deficit.

The State developed an alternate financing plan, with the assistance of the study, which would have provided the needed long-term financing without a significant rate increase—the increase proposed in the State's plan was 13 cents per thousand gallons, or 3 percent. We very much regret that the Elk Pinch PSD has thus far rejected the State's proposal, without engaging in followup discussions with the State to explore it.

In our March 8, 1984, letter to the PSD, we outlined the information which EPA requires for resumed construction under the grant program. Areas covered in the letter, which has been partially answered, were financial planning, security of records and assets, operational planning, project administration, and project engineering. We continue to believe that the requirements outlined in the letter constitute sound, practical advice to the PSD and are basic to EPA's overall management responsibility, as stewards of the National Construction Grant Program, to protect a substantial public investment.

EPA recognizes that the Elk Pinch community has faced some special difficulties in carrying out the complex requirements of the grants program. I believe that EPA has been responsive to the community's needs. I have already mentioned the alternate financing study and the comprehensive requirements of our March 8 letter.

In addition, our staff has devoted much time to assisting the PSD, including participating in numerous phone conferences and meetings, to provide our best advice. We are also reviewing a request for additional grant funding which the PSD may use to obtain legal and technical assistance, and advised the PSD of the additional information required to complete its application. Finally, we are also in discussion with the PSD about the grant eligibility of special engineering services which may be important during the first year of operations.

I want to assure the subcommittee that EPA will continue to provide our best advice to the Elk Pinch PSD, both during the construction phase and after operations begin. We will promptly review all required documentation and provide, with the State's concurrence, all possible grant assistance eligible under the Clean Water Act.

Although responsibility for taking enforcement action to remedy violations of NPDES discharge permits was delegated to the State since the Malden facility began operations, EPA has not taken enforcement action under the Clean Water Act for two reasons. First, we have continued to emphasize the need to pinpoint and eliminate the causes of the plant's performance problems. Second, the plant's performance has been improving significantly during the past year. Under these circumstances, EPA does not feel that acting in an enforcement mode would have been an effective way to improve plant performance.

EPA has met with leaders of the group of Malden citizens who believe that their boycott is an effective way to improve performance. In the strongest possible terms, we have urged them to recognize that unless the PSD has sufficient revenue to properly operate, maintain and improve the system, the combination of substandard performance and insufficient revenue will continue, to no one's benefit.

We have advised the PSD of information needed to complete the application for technical and legal assistance and are willing to meet with the PSD to assist in developing the documentation. EPA continues to advise the PSD that a contract operator may provide the best way to improve the Malden plant's operational and management capabilities. We have also received assurances from the West Virginia Department of Natural Resources that it will become more directly involved in advising the Malden PSD on ways to improve its day-to-day operations.

Henry Longest has already discussed the Agency's policies to strengthen the ability of EPA and delegated States to screen potential problem projects and to assist communities during early project stages. I would like to add that our staff has been working with our counterparts in the States to encourage enthusiastic, not pro forma, implementation of these policies. West Virginia is well along in the process of developing the specific guidance to assist its communities before the basic project decisions are made. I believe there will be a considerable payoff to the Nation and its smaller communities for many years to come, as construction and operating costs are reduced as a result of these and related policies.

Of more specific benefit to West Virginia's small communities is a study conducted by EPA last year to identify their special problems and the actions which should be taken at all levels of Government to improve the performance of the grants program. This study resulted from the annual negotiations between EPA and the State, and was included in the State-EPA agreement partially in anticipation of the October 1, 1984, statutory changes in the Construction Grants Program.

EPA is working with the State to assure implementation of the recommendations, with emphasis on more "hands on" assistance by the State to small communities and their consultants. I would note that a cooperative effort of several State agencies—the department of natural resources, public service commission and the Governor's Office of Economic and Community Development—delivered a series of PSD training seminars in 1983 throughout the State.

Followup sessions are scheduled to reach additional communities and to reinforce the training for communities that are approaching key project decisions. EPA will be closely monitoring the performance of all States in how they assist communities that participate in the construction grant program, and will use our annual performance agreements and evaluations with the States as a management tool for this purpose.

Mr. Chairman, I hope that my testimony and that of my colleagues is helpful to the subcommittee in understanding what went wrong in two West Virginia communities, how EPA is assisting them, and what EPA is doing to prevent these problems from arising elsewhere. The financial problems in Elk Pinch and Malden are of great concern not only because of the obvious direct impact on the two communities, but because of the potential effect on the viability of the State's municipal facility bonding program.

It is clear that the marketability of the State's bond program directly affects the ability of many West Virginia communities to participate in the construction grant program. Without widespread participation, needed water quality improvements cannot be achieved.

From that point of perspective, I want to observe that the regrettable circumstances facing the Elk Pinch and Malden PSD's are extremely rare in the construction grants program, and will continue to receive our special attention. The basic structure of the program is sound and works well in the vast majority of participating communities. I believe that the problems we are discussing today do not indicate a failure of this basic structure.

I want to assure the subcommittee that EPA will do whatever we can, consistent with our responsibilities under the Clean Water Act, to assist both communities to make the best of their unfortunate circumstances. Cooperation and understanding will certainly be required by the citizens of both communities, and I hope that this hearing will contribute to this process.

Thank you.

Mr. LEVITAS. Thank you, Mr. Eichler.

Congressman Molinari has an opening generic question that he would like to ask and then there will be other questions.

Mr. MOLINARI. Thank you, Mr. Chairman.

I have listened to each and every panel that has testified today and what I have heard is each witness describing what they have done or not done. What I have perceived is that there is one hell of a mess here, and nobody really is standing up and saying it is my fault or it is his fault per se. Somebody screwed up. It is as simple as that.

Mr. EICHLER. I don't buy what you say about this being a rarity. If, in fact, what you say is correct, then I can't believe what Commissioner Stump said, because he says there are two other federally funded projects in addition to the two named in the same area within 10 miles of the State capital that are all in trouble. So there we have four alone within 10 miles of the State capital.

We have testimony that 38 States have been delegated authority to handle the program and we have testimony by EPA stating that it is reviewing the States because they are not doing the proper job. We have statements that there were mistakes made in establishing the economic viability of the project. This was not discovered until the project was completed or almost completed. We have statements by Mr. Longest, who says that throughout this process EPA has been and remains ultimately responsible for the Construction Grants Program.

Now, if EPA is going to be ultimately responsible, should they not have the primary responsibility of approving the design plans for a project? We have heard the testimony of county officials who have looked for help, and my perspective is they were trying to do what was right. They had serious problems back home with their constituents. I suspect that this is not a rare problem and not one that is unique to this particular area, but one that we are probably going to encounter in other sections of the country. I am one who believes in delegating authority to the states where possible, but in delegating that authority, how can we permit projects like this to drop through the cracks? Who is there to monitor the construction and to determine whether the financing is feasible?

I think there are some admissions in the testimony of Mr. Eichler and others that indeed there was an overestimation on the economics of the project. It is comforting to have that, degree of candor there, we have two projects, one that is completed and not functioning and another that is stopped and in a state of limbo, which raises the question of accountability. I wonder whether we are heading in the wrong direction and whether we shouldn't be perhaps turning the clock back. Maybe we shouldn't be throwing the responsibility on small communities who perhaps don't have the proper resources to be able to do the job. I would like to hear a response before we get started.

I would be satisfied with an honest answer to that question. Perhaps it has been a long day and a long week for me. We have had testimony on problem projects and once in a while an individual gets up and says "I am the one who is responsible." It is both unusual and comforting. We have a serious problem here. I am trying to find out how this occurred and how we can prevent it from occurring in the future so that communities with legitimate problems can solve them within the scarce Federal dollars that are available. I welcome comments from any of you.

Mr. LONGEST. A couple of comments.

When we talk about delegating a program, EPA remains responsible for the program. To me, that is not at issue. When we delegate to the states and a grantee takes on certain responsibilities in terms of managing the project, you can't delegate and, at the same time, turn around and evaluate detailed plans and specifications. The two don't go together.

Mr. MOLINARI. How can you assume the ultimate responsibility for what happens to the project?

Mr. **Longest**. EPA has responsibility for the construction grants program. The program is made up of many projects. We are delegating some of our responsibilities to States to help carry out the program by managing individual projects on a case-by-case basis. If we were putting ourselves into a situation where we are saying we are delegating the program yet we are going to look at plans and specifications in each case, we would not have delegated anything; we would be doing it all at EPA.

The law not only gives us authority but tells us to delegate the program, which we are doing, where the capability exists.

When you talk about looking at individual plans and specifications, there is a series of actions that take place. The consulting engineer designs the facility. The consulting engineer is licensed by the State to carry out that function and put his or her professional engineer seal on that drawing. These plans and specifications are their responsibility. Their seal on the drawing assures that they designed it and will take responsibility that it will work.

We can't step into that particular process. We have a system to manage the program, and the system includes the State; and it includes the grantee. The grantee is responsible for the day-to-day management of a particular project, including the Federal dollar.

The best analogy I can come up with, based on what I have heard today on the PSD in West Virginia, is an analogy between a corporation where you have a board of directors, overseeing the corporation, and the PSD, where you have commission and the employees are the engineering consultants, the financial consultants and the real estate consultants. The employees report to the commissioners. There is no chief executive officer in the PSD between the commissioners and the employee. That is something that I have learned from the hearings, and I don't think that is typical of the way the projects are managed throughout the country.

So you have a specific case here, a specific organization, PSD's, that does not have a chief executive officer. I think that is important. I would not carry that over as an analogy of what is taking place on other projects.

Mr. **Levitas**. Anybody else want to contribute?

Mr. **Eichler**. I didn't say that we overestimated the financial plan. I said we overestimated the capability of the PSD to manage that financial plan.

Mr. **Molinari**. Mr. Longest, you mentioned in your answer that there is reliance upon the consulting engineer who signs off on the job. But in your statement you said in the early years there was a tremendous reliance on the judgment of the consulting engineer to see that the job is done properly.

How has that changed?

Mr. **Longest**. In terms of the actual design, the drawings themselves that the engineer puts his or her seal on, that has not changed.

There was a comment made earlier, I believe by Chairman Levitas, that these projects were carried out in accordance with all of the EPA's regulations, and I think that is what we have said. The regulations require that the grantee have plans and specifications developed. The grantee hires the engineer to do that. That is the requirement of the regulation—that they be designed by a professional engineer; and they were. A professional engineer put his seal on those drawings. He is licensed by the State of West Virginia. So that is his responsibility in this management system.

Mr. MOLINARI. We heard the county officials saying they reached out for help and guidance. They reached out to the State offices and to the President and to region 3 and there was nobody home; nobody answered. That is their testimony.

Mr. EICHLER. I will let the State answer for themselves. We had numerous meetings, phone conversations back and forth about what we can do within the limits of the law. The cost overruns in Elk Pinch were non-Federal-eligible cost overruns, so we cannot contribute 75 percent of these because they are not eligible in the first place.

To that extent, obviously the district is very disappointed that we didn't respond with the kind of financial assistance that they were hoping for. I think that is the essential element of their disappointment.

We can talk about other details of involvement that we have had with them and various things that we can and are attempting to do with them.

Mr. ROBINSON. We have a similar perspective. We stand ready and willing and have attempted to assist in whatever manner possible. We also serve as a daily contact, if need be, with EPA. We have to follow the recommendations in effect that govern the program.

My understanding of what the PSD's needs are is dollars, and we have no way in the State of West Virginia to give them those dollars. I think it is that simple. That is the assistance they are crying out for.

Mr. MOLINARI. Thank you, Mr. Chairman.

Mr. LEVITAS. Thank you, Mr. Molinari. You will have another chance.

I have a couple of questions, and then Mr. Wise.

Mr. Longest, the law states—I am going to quote from section 204(b)(1)—the law states:

> The Administrator shall not approve any grant for any treatment works unless he shall first have determined that the applicant has legal, institutional, managerial and financial capability to ensure adequate construction, operation and maintenance of treatment works throughout the applicant's jurisdiction.

My question is simply this: How did you at EPA make the determination with respect to Malden and Elk Pinch? And to the extent that you relied on the State agency, Mr. Robinson, I would like you to respond to the same question.

Mr. LONGEST. The first point is from a policy/regulatory standpoint. The submission of a grant application constitutes an applicant's assurance that he can and will follow the standards that are set out by EPA. And, as we state in the regulation, an applicant may be presumed to be responsible in the absence of any questions as to his ability to meet those standards.

Mr. LEVITAS. I am glad you quoted that. I was just about to read that to you. I don't know whether you wrote that regulation or not, that particular one you just cited, but that is the assumption of an almost palpably untrue conclusion; that is, assuming that people have capabilities without establishing it.

In this case, is it not true that the public service district was actually created by West Virginia to facilitate construction of the project and, consequently, could have had no history of performance; and yet, by its very creation would have automatically been in compliance with EPA's requirements?

Mr. LONGEST. We further state somewhere in the regulation that the applicant—in this case, the public service district—if they do not have this capability, it is an "or" there, or they will obtain such capability—in other words, they hired a consultant engineer, a financial consultant, real estate consultants. So the decision there, in terms of EPA, is either they have the capability onboard, so to speak, or they commit to get that capability.

Mr. LEVITAS. Let me ask you a real world question, one that happens on the street there.

Do you know what EPA actually did in determining whether this capability was present?

Mr. LONGEST. In this particular project?

Mr. LEVITAS. Yes.

Mr. LONGEST. I would have to turn that over to the region.

Mr. LEVITAS. Mr. Jones, do you know the answer?

Mr. JONES. My name is Greene Jones, of region 3, and in the case of Elk Pinch there was a considerable amount of involvement by our inspector general in that project before the construction grant was awarded. As a result of that involvement, there was more detailed attention paid to the capabilities of the grantee, the PSD. And because of questions raised during their investigations—this is EPA's IG—we insisted that there be a project coordinator hired by the grantee; also, that they retain a CPA and that they get assurances from local bond counsel that the local share would be available.

So, in the case of Elk Pinch we went beyond what we normally do, taking the certification of the grantee that they are capable of managing the project.

Another factor used in determining the qualifications of a grantee is that it has to be an acceptable form of local government, municipal government. That is, in addition to the legal, institutional, managerial capabilities.

Mr. LEVITAS. In effect, what you are saying, as I understand it, this project coordinator that EPA required the PSD to employ, that would really be the CEO that Mr. Longest said they should have?

Mr. JONES. The CEO?

Mr. LEVITAS. The chief executive officer, somebody in charge.

Mr. Longest made the point that one of the deficiencies with the PSD set up, as I understand it, is that there wasn't an executive in charge of the whole thing.

Mr. JONES. I don't think that the project coordinator is really an executive in charge that makes policy, financial command decisions like a chief executive officer might. I will have to defer to Mr. Longest for his interpretation of that.

But what I would interpret as a chief executive officer is somebody who will be calling policy shots, not only just project coordination shots.

Mr. LEVITAS. How about one person who knows what is going on?

Mr. JONES. That is a fairly good description of a project coordinator.

Mr. LEVITAS. I think that is probably one of the things Mr. Longest had in mind.

Mr. LONGEST. Basically, yes, providing the person had the authority to make decisions.

Mr. LEVITAS. You see, I think we are highlighting one of the problems here, and that is that almost invariably in these small community situations what we are seeing is that the local government or the PSD, in this instance, rely on the State and Federal Government; and these independent agents they contract with—the engineer, the lawyer, the financial expert, the accountant—tell them what they ought to do and how they ought to go about it.

What you end up with is a lot of people out there sort of running around in a beehive with a lot of paper processing and relying on expert opinions and things of that sort, without having anybody at EPA or at the State level looking substantively at what really is going on. If there is a financial expert who has been hired there, then they say that is it, without trying to make some determination as to what is that plan—can Elk Pinch manage an area by transition, one of the problems that Mr. Eichler pointed out.

It is almost sort of, if there is enough paper out there to rely on and enough people who are scurrying around, then we just ought to rely upon that with that presumption, and everything else, that it is going to be done right, until the thing comes apart; and then we find out nobody is responsible. I think that is part of what Mr. Molinari was getting at.

The GAO—and I am quoting from page 3 of Mr. Wessinger's statement earlier today:

> From our review of EPA records and our discussions with representatives of the various entities involved, we believe that EPA followed its procedure for approving grants for the planning, design and construction of the two projects.

Now, I guess my question is, Mr. Longest: If that is the case, and the result is what we have heard testified to today, would you think there is some need to change those procedures and policies and regulations in order to avoid that; or is the problem someplace else? And, if so, where else is it?

I want to make sure that we are talking about the same thing. That is a very important question.

Mr. LONGEST. I understand. Let me give an example of what we have done, and then get to what we should do here.

The example of what we have done is financial capability—does the community have the financial capability. We had sort of a presumption test there, also. Now we say the community must demonstrate that they have the financial capability. We have given them a series of questions that they must answer to prove to us that they have the financial capability.

Our real thought behind that is if the community goes through the thought process, they won't just be proving it to the EPA; they will be proving to themselves that they have the financial capability. We have not applied that to the question that you asked in terms of, can they manage the project.

One thought has gone through my mind: Maybe there should be a demonstration that the community has the management capability similar to the demonstration we have set up on financial capability. My only hesitation there would be—and I am thinking outloud to respond—is we find ourselves many times regulating or developing policy for the worst case. So the thought that I would have to consider is, is this a nationwide problem; do I need to put on more requirements because of the problem we have found here?

I don't have an answer to that now because I would like to give more thought to it, but I think it should be thought about; demonstrate financial capability; should we require them to demonstrate management capability.

Mr. LEVITAS. As you know, the construction grants program will ultimately be the largest public works program in the history of the United States of America, larger than the Interstate highway grant program or anything we have ever conceived of. So that is a lot of dollars.

What troubles me is—and it has to trouble you—that if what was done by EPA in this instance was according to the book, and you end up with one plant that is not working and another plant that is not finished and is in dire financial straits, then surely you have got to do something to change the book or else you are going to—if you don't have some others out there that are like this—and I rather suspect that there are, based on some other information we have—then there are going to be others in the future, and you are going to be saying some day, in a month or so, the same thing. And I am suggesting to you that there has got to be a change in the procedures or else you are going to get more of these things.

Somebody has to be accountable for spending the taxpayers' money on this thing or assuring that we are getting what we are paying for.

Do you get my drift?

Mr. LONGEST. I understand, exactly.

Just two points. One is, I do not think this is typical. The second point, yes, we have identified a problem with the PSD which is very real, and we need to address that.

A third point is, consider making demonstration of project management capability similar to demonstration of financial management capability.

Mr. LEVITAS. Let me ask you another question. Let's assume that Elk Pinch doesn't go on to completion, somebody doesn't work out the financial arrangements and the project goes into an actual default in the next few months when the short-term financing or bonds become due.

What is going to happen then? Who is going to pay for the project? Where is the money going to come from? Is EPA going to attempt to recover the Federal investment already made, about $12 million? Will EPA be holding anybody accountable legally? And, as Congressman Wise, Mr. Eichler and others have pointed out, you are talking about a public health problem that still needs to be dealt with.

What is going to happen? Who is going to pick up the pieces?

Mr. LONGEST. I am hesitant about giving a hypothetical answer to a hypothetical scenario. I would rather address a couple of other things. First, is that project completeable? I understand it could be completed in a couple of weeks' time. I think we should put our efforts and energies into completing the project.

Mr. **Levitas**. Are you going to give them any more money to complete the project?

Mr. **Longest**. I will have to ask the region to respond to that, because they keep the books in terms of payments.

Mr. **Levitas**. I want to know if they are going to get any more money from EPA, because if not, then I want to ask the State, do they know where they are going to get more money.

I heard the PSD people say they didn't know where they would get more money.

Mr. **Eichler**. The basic overruns that they have are in the nongrant eligible parts of the project. We will pay any grant eligible parts of the project that may be involved.

We are also talking with them about the possibility of exploring any other technical or legal assistance that may be appropriate, should that issue mature. But essentially, I think I have to say that we are limited by law to paying 75 percent of the grant-eligible part; and basically that is not where the overrun is.

Mr. **Levitas**. So I translate that into the fact that the default, the deficit, the problem—the default, if it occurs, isn't going to be cured by more money coming from EPA?

Mr. **Eichler**. I don't know of any legal way to do that.

Mr. **Levitas**. I don't understand these programs that well, and I am just trying to find out what is going to happen next.

Does the State kick in the money, Mr. Robinson, to take care of the deficit?

Mr. **Robinson**. The State, the department of natural resources, certainly doesn't have a grant program to do that. The only way that I can think of where the State could kick in some money is if the legislature of West Virginia would appropriate some money for that specific purpose; and, of course, it is not easy to predict what the legislature will do.

Mr. **Levitas**. Mr. Longest, I am going to let you off the hook partially by saying you don't have to answer my question. But I suggest that good management would require that EPA, Mr. Eichler, you, Mr. Ravan, Mr. Ruckelshaus, better start thinking, because it could happen very shortly.

When those bonds come due, and nobody is going to be there to pay them—we have got $12 million of Federal money invested in this thing. What is going to happen? Are we going to sue somebody to get our money back? I mean, I don't want you to wait until it happens and then say, hey, we didn't think about what we are going to do next.

You have $12 million in a project that, right now, unless something happens, they are going to be in default.

Mr. **Eichler**. Let me say, from the regional perspective we are thinking about all those eventualities. I heard people at the table earlier today express their confidence that the project would be started up soon, and I would rather be an optimist at this point than otherwise. But I can assure you we will protect the financial interest of the Government should there be a default situation and creditors seeking protection. You can be sure that we will protect the interest of the United States.

Our concern is to get the plant operational.

Mr. LEVITAS. That would certainly be what everybody would like to see happen. I just haven't heard—maybe it was said when I was out of the room—what is going to be done to achieve that, and that is what I am troubled about. I haven't heard that, and I don't know what it is.

Mr. EICHLER. Well, the earlier witnesses did indicate that the District had voted to resume construction. The State has proposed a financial plan. So I think there are a number of things under way that do show some promise of ending the hiatus that we have on the construction.

Mr. WISE. Would the gentleman yield?

Mr. LEVITAS. I am finished.

Mr. Wise.

Mr. WISE. Mr. Eichler, are you aware that region 3, to my knowledge, does not approve of the plan the district has put forward because it carries possibly a deficit?

Mr. EICHLER. I understand that it does have a deficit.

On March 8, Mr. Jones sent a letter to the district raising a number of concerns that we had. I think that that letter has been partially answered. Somebody told me today that there is another reply in the mail which we haven't seen.

I believe that under the regulations, we have limits in our ability to even fund within the grant-eligible share as long as there is a deficit in the project. So that problem will have to be addressed by the district.

Mr. WISE. Do you appreciate the district's problem that EPA says there is nothing we can do? But, incidentally, continuing to make payments during the time that the deficit existed, EPA says there is nothing we can do, but if you try to work out from under this we won't help you and we will stand in the way. That is the situation I think these people are in.

Are you aware, for instance, that at the time when the district was trying to put this plan together the first contact with region 3 resulted in Mr. Carney, it is reported to me, saying, well, there will probably be a 3-week delay in processing paper? Happily, Mr. Jones cut through that the next day and promised that it would be down to 48 hours. That helps a lot.

This letter, for instance, which I would like to have put into the record—it is a letter dated March 8, I believe—is that your letter, Mr. Jones, to the district?

Mr. JONES. Yes.

Mr. WISE. It tells the district—requests comprehensive information.

I can understand you wanting to have it. It would have helped if the EPA had asked for that information 3 years earlier. It asks for comprehensive information and says failure to submit the request for information within the specified 10-day period will leave EPA with no recourse but to consider followup actions including the seeking of remedies from the courts.

Do we want it to go, or don't we? My question comes back to we seem to be in a catch-22 position. We all agree—and your commitment to getting this project started, I have no questions on that—we all agree it needs to be started. The district has come forward with a plan they think is reasonable and has a reasonable opportunity to resolve the deficit question at the end of the road. But we will get a bill to get revenues in there. Yet, we keep seeming to run into roadblocks with region 3.

Mr. **Eichler**. The course of the discussion all day, one of the things being explored, is whether or not EPA has followed all the regulations. I think we have, and I am not about to not follow them at this point.

Mr. **Wise**. I yield back.

Mr. **Levitas**. Thank you.

I just wanted to conclude my comments at this point, Mr. Wise. I think I have asked all the questions. There was one other one here. I think that has been covered.

Let me just say this, Mr. Longest: You said that the two projects that we are talking about here are not typical. And I would say that is damning with faint praise. It is not whether they are typical or not but how rare is this.

I think you are implying, and Mr. Eichler said that, you know, these are unprecedented—not quite unprecedented but extremely rare. And I submit to you that it is not nearly so rare as you are suggesting to me.

If you go back and read the 1980 GAO report, if you read the report of this subcommittee that was issued in 1981 on implementation of the Clean Water Act, the construction grants program, if you think back to the GAO report that was issued earlier this year and the hearings which this subcommittee had earlier this year on plants that have been constructed and are not working, if you think about the 25 to 30 percent—whatever the number really is—of plants that have been inoperable or are not meeting their permit requirements in a very significant way over the last number of years, they are suffering from the same type of problems that we are just seeing brought out here, except a little bit more graphically.

If you think about that project in Detroit, MI, where after $80 million of Federal money was invested in one interceptor line they decided not to hook up the interceptor with the treatment plant—you know them much better than I do. I could sit here and give you another 10 minutes of just calling off the names of these plants. We have listed them in our committee report. GAO has reviewed them again and again and again.

I am simply suggesting to you that these two plants we are talking about today are simply examples of recurring problems. And if, as I said earlier—and I am not going to belabor it—if this is being handled in accordance with EPA procedures, and the evidence is rather consistent that there are many problems out there in the program, that it is important that you at EPA first accept the fact that there is a problem and then turn your attention to doing something about it. And I just leave you with that.

If you care to comment, fine. If not, that is OK, too. But I have asked my questions, and Mr. Wise will be next.

Mr. **Longest**. I would like to respond, and first put my comment in context that I don't think this is typical. We are talking about two projects, two different issues: the first project, Elk Pinch construction management, was it properly managed; second project, Malden operational problem can it be operated or constructed?

My specific comments relating to "not typical" is the construction management at Elk Pinch. The response related to operational problems, I clearly admit there are operational problems out there, many of them. We have to address that, and that is recognized.

In terms of the point about looking to the future, I think we have demonstrated through the issuance of a financial capability policy that, yes, when we are made aware of a problem such as the capability of a community to afford a project after its construction, we have addressed that with a policy that I think will do the job. As I said earlier, clearly we will consider whether or not we need a demonstration policy in terms of the grantee's management capability. We are listening to what you are saying and will respond where appropriate.

Mr. LEVITAS. Well, as I indicated previously, a few months ago and again this morning, I expect and accept that we will be having another followup hearing on the general subject matter with Mr. Ravan and just see where we are at that time, and I guess that will be the best test of it.

Mr. WISE. Thank you, Mr. Chairman. That is a very appropriate date since I believe it is September 15 when the notes become due on Elk Pinch, $12.8 million, and we know whether it is in default or not.

Referring to really the generic question Congressman Molinari asked, do you all recall a meeting in the Kanawha County Courthouse that was held in January? Mr. Eichler sent Mr. Jones and Mr. Carney, I believe Mr. Goodwin from the State of West Virginia was in attendance, the county commission was there, Commissioner Stump, I believe the other commissioners were there, the Governor's office of economic and community development was represented and the water development authority. We were all seated around a table much like this one.

At that time, I asked first the GOECD representative whether they had done any review of the Elk Pinch project. I forget whether Malden was on the agenda or not. They always seemed to run together. The answer was, "No, we don't do that kind of thing; we help prepare some of the financing. We don't do it."

I turned to the water development authority. They only do a peer review, and we do a cursory review that is required by their regulations and the engineering peer review was cursory. I turned to, I think you were next in line, Mr. Goodwin. I asked whether the department of natural resources had done a comprehensive engineering review of this project. Please correct me if I am wrong. I recall your answer being, it is a cursory review that the DNR is charged with doing in this particular case; is that correct?

Mr. GOODWIN. For eligibility.

Mr. WISE. That is the proper word?

Mr. GOODWIN. Yes.

Mr. WISE. I came around the corner of the table and the last one left was EPA. I asked Mr. Jones what kind of engineer review had EPA had. The answer was, cursory or administrative.

I concluded that, in other words, no one did more than a cursory review. We ali looked at one another and that was indeed the summation.

Is that a correct recounting of that?

Mr. **Jones**. Yes, sir.

Mr. **Wise**. The record should show everyone is nodding yes. If no one objects, we will have that.

Congressman Molinari, that is it. We do a cursory review at every level. Who reviewed it, who said this, who did the comprehensive review to say this is a good project.

Mr. **Robinson**. I believe you mentioned perhaps a specs review. I think that we both agree EPA and the State and we have testified that a detailed plans and specs review was done on the Elk Pinch project.

The financial management, I think, is one where we may have indicated that there was a very limited review or administrative review that took place. I want to clear that up.

Mr. **Wise**. You are saying it is a comprehensive engineering done by the State department of natural resources?

Mr. **Robinson**. Yes; I think EPA in an oversight role.

Mr. **Wise**. Who performed that State department of natural resources, Mr. Johnson?

Mr. **Johnson**. Yes, sir.

Mr. **Wise**. What was the extent of that review? Did you also do one for Malden?

Mr. **Johnson**. No, sir, the plans and specs review for the Elk-Pinch project, to my recollection, was done during the 1978 to 1980 period, at which time we were fully staffed to a level sufficient to handle the workload that we have. I consider our review of those plans and specs of the Elk Pinch project to be detailed in nature and just not a cursory review.

However, I want you to understand that we do a detailed review as far as our capabilities will allow us to do, meaning we have civil engineers on our staff, sanitary engineers on our staff, and we do review those aspects of the project in detail. However, for example, we do not have electrical engineers on our staff. We don't have structural engineers on our staff. So those particular aspects of any project we don't do a detailed review.

Mr. **Wise**. Do you have process engineers on your staff?

Mr. **Johnson**. Yes; we do.

Mr. **Wise**. Did they judge that Malden would work?

Mr. **Johnson**. No; I am just talking about Elk Pinch. Malden, a review of those plans and specs were done back in the 1976–78 period, at which time we did not have a staff near the level we should have had to review the project.

Mr. **Wise**. Even though we don't have, you have process engineers but you don't have structural and you don't have electrical?

Mr. **Johnson**. No; we do not.

Mr. **Wise**. Isn't a major component of the treatment plant electrical?

Mr. **Johnson**. It is a component.

Mr. **Wise**. Mr. Jones, do you have that review capability?

Mr. **Jones**. We have civil engineers and sanitary engineers on our staff as well but we do not do detailed engineering reviews of plans and specs. We do not check the size of the pipes, the slopes, the flows, the nuts and bolts of the pipes or the pumps. We review a project for administrative completeness and conformance with the regulations.

Mr. **Wise**. Mr. Johnson, then do you do what he doesn't do? You do what Mr. Jones' agency does not do, the specific function he mentioned?

Mr. **Johnson**. As Dave Robinson explained in his opening statement, we sort of have two caps on our head: One to make sure that a project conforms to all EPA regulations and policies and so forth, which is the review Mr. Jones has talked about; then we have the State cap on our heads too, and it is my opinion that we have to make sure that any project that is designed when it is constructed will operate like it was intended to.

Mr. **Wise**. Mr. Jones, does this concern you? You have delegated primary responsibility to the State of West Virginia; does it concern you they don't have this, at least some of that capability?

Mr. **Jones**. Well, I think it was stated earlier by Mr. Longest that we rely on the professional engineering community and their capability and competence to design and prepare the plans and specifications for the projects.

Mr. **Wise**. But, Mr. Jones, I know I don't have to tell you this, the professional engineers' contract says he is not accountable, doesn't it?

Mr. **Jones**. Well, I don't know how to answer that. I don't think that that is correct.

Mr. **Wise**. What is the remedy then? Let's assume we have a project that is not working; who fixes it? Who is accountable for that?

Let me ask—I'm sorry, I know I am being not as direct as I could be. It seems to me the only remedy, then, you have left it up to the grantee, the district in this case, to then sue the professional engineer, am I correct?

Mr. **Jones**. Well, EPA relies on the delegation of responsibility to the grantee. When we make a grant to a grantee, the grantee is responsible for administering and carrying out that project. That is a contract with the grantee, and when he contracts with the consulting engineer, it is his responsibility to see that he gets what he contracts for. If he doesn't get it, then it is his responsibility to do what is necessary, as a remedy.

Mr. **Wise**. In the case of Elk Pinch—and who knows what is going to happen in the case of Malden—we are down, significantly down the road and we find out things aren't as they should be and the whole Federal investment is in endangered. Is that not correct?

What you are saying is to region 3, in the case of Malden, to one retired man, two retired men and I forget what the other gentleman does, in the case of Elk Pinch a funeral home operator, someone who works in construction and I forget what Mr. Evans does. He is not a professional engineer. You are saying you are going out to recover—we hold you responsible. Is that not a fair summation?

Mr. **Jones**. Well, I think it is fair to say that the PSD is responsible when they ask for the grant and accept the grant.

Mr. **Wise**. Thank you. You have answered that.

As I start the next line of questioning, let me say, Mr. Eichler, I greatly appreciate the fact that while I have not always gotten the rules I wanted out of EPA region 3, you have been very forthright and always accessible. That means a lot.

I know you are frustrated with Elk Pinch. But I have got to ask you some questions that do concern me. We have talked about the remedy concerning assistance by the Environmental Protection Agency to the public service district, Elk Pinch Public Service District.

The plusses I see are this. Mr. Jones has I think cut through what appears to be a roadblock, a bureaucratic roadblock. Paperwork will be processed that much quicker. We appreciate that; the district, I am sure, appreciates that. You have made yourself available coming to Kanawha County one or two or three times. I know that is appreciated.

What concerns me, though, is that I know that one district, Elk Pinch, I believe has filed at least two applications for legal and technical assistance and is being requested to do so the second time, told to apply under a different section of the law and they might get it.

The other district similarly has been turned down. You mentioned that to the chairman, that legal help might be forthcoming when the issue matured. In the case of Elk Pinch, I guess it is matured. They filed a suit for $60 million, did it on their own. The county came forward with some money. They do need technical assistance.

We asked the region 3 office to explore avenues for help—I am not asking you to violate your regulations, but something is missed all along the way. We asked the region to explore ways of being positive to the Elk Pinch district and after review, in fact, the subcommittee staff put forth several possibilities. Other regions had been helpful at least in advancing money contingent upon subrogation. They received a flat turndown.

Then it seemed to me there was a distinct shift in EPA's attitude. It went from being positive, you are going to get in line and get this thing moving. Would you care to comment on that?

Mr. **Eichler**. You have made a lot of suggestion there. Let me say that one of the things we did do jointly with the State is secure a study from the Municipal Finance Officers Association to diagnose the financial side of that plan and what had happened. I think that was of tangible assistance to everyone to shed some light on where things stood. There are things like that that we can do and have done.

I think that that also led to the proposal that the State has made to the district for a financial plan which would see our way through all the way, and when I say "all the way," if there is a deficit in the plan, the State's proposal includes additional State money which would be made available provided certain State conditions are met. So I think that is a plus they should get credit for.

It would also address the deficit issue which I have to be held accountable for in terms of any additional federal funds for which they are already eligible. So I think those kind of things have to be in the works.

I think that the discussions, multiple-party discussions have been very fruitful, but unfortunately, they haven't been conclusive.

Mr. **Wise**. Could I ask Mr. Robinson at this point, the State plan that has been mentioned, as I recall, the State money that is going into that is $300,000 from the water development authority, is that correct?

Mr. **Robinson**. Yes, sir.

Mr. **Wise**. Well, I assume both you gentlemen are aware the plan proposed by the county commission and the Elk Pinch Public Service District also incorporates that money and they have received a letter of assurance from the WDA that money will be there.

Are you both aware of that? That is very important, I think you know.

Mr. **Robinson**. Yes.

Mr. **Wise**. Mr. Robinson nods affirmatively.

Mr. Eichler.

Mr. **Eichler**. I am not quite sure what we are aware of on that.

Mr. **Wise**. Mr. Carney or Mr. Jones.

Mr. **Eichler**. Apparently we are aware of that.

Mr. **Wise**. So, therefore, the plan advanced by the district has the same elements in it that you were asking for from the State, is that correct, the same assurances if not the same elements?

Mr. **Eichler**. Now we are talking about something I am not sure we have seen. I think we have seen some elements of it and I have been told by someone today there is further response to our concerns in the mail.

Dennis Carney has been on the phone with the district attorney outlining the specific problems that we have in some detail. I think there have been a number of conversations. I hope that whatever is in the mail addresses the rest of those concerns.

I would be delighted to think that it would and we would be in agreement, but we will have to see.

Mr. **Wise**. As I understand the situation, and I stand to be corrected, the district ran into a problem a week ago when they finally got the municipal bond people, the insurance agency, to tell the bank that it had the necessary assurances it needed to release the funds.

But we needed assurance from EPA. EPA said they could only, I think, account for $1.4 million instead of 1.8 or something. The circuit court told the bank, "You can't hold the money anymore." The project hopefully is going to start this week. I hope we don't run into another roadblock in EPA. These people are trying to get the thing going.

Mr. **Eichler**. If there is a deficit in the plan under the regulations that we have I don't believe we can responsibly advance any more money.

Mr. **Wise**. You have advanced them since May.

Mr. **Eichler**. We cannot advance money in the view of the plan with a deficit in it.

Mr. **Wise**. Well, I won't ask you to take it home and think about it. The message, though, is these people are going to want to start this project. They think they have a reasonable way to do it.

One frustration seems to be EPA which is pressing so hard to do it. There is every likelihood that if they are not able to start it, the question and contingency that the chairman advanced will be the reality and you will have yourself on September 15 a public service district uncompleted.

I would think it would be better for all concerned for EPA to assist and to get this project moving and to recover its investment as opposed to us having to go to that contingency.

Mr. EICHLER. Are you suggesting that there is some assistance we could provide that we haven't?

Mr. WISE. I suggested that before. You tell me there is not. We thought we would put out some proposals to you.

Mr. EICHLER. Those were five projects which we reviewed with headquarters because they relate to national issues, and the conclusion that was drawn was they did not pose any kind of precedent for this particular project.

Here we are dealing with local cost overruns and it is my understanding in reviewing those with headquarters that they don't provide a basis for making any additional Federal funds available.

Mr. WISE. Mr. Eichler, you and I can't dance around on this pin all day. Let me suggest there was no precedent for those five actions that you took. Those were unprecedented actions. You saw a need—when I say "you," I am speaking of EPA—you saw a need and responded to it.

Mr. EICHLER. I will defer to Henry. I believe the ability of EPA to respond to those was felt to be consistent with the law and the regulation and that this same consistency was not found in this case.

Mr. WISE. Mr. Robinson, I know a lot of water has gone under the bridge since 1981, but I am concerned in the whole area of oversight with the State's reaction at times.

Let me ask you, it is already in the record, referring to the December 23, 1983, memorandum from Mr. Hipes to Warren Means in which several of the suggestions included initiating a media campaign to refute the half trust and information being given to the media by Douglas Stump and Congressman Bob Wise that DRD has taken a beating. Did you ever undertake that media campaign?

Mr. ROBINSON. The first knowledge I had of the memo was when a reporter showed it to me today out in the hall, and in talking with our staff, apparently this was an internal memo that somehow was released by somebody to someone. It originated apparently from a staff engineer at a very low level that had no authority or management responsibility.

The part that you cited offended me and I am sorry that happened. It is certainly not a memo or indication of the department of natural resources, nor the division of water resources' feeling, because we are as interested and as anxious to work with the PSD to resolve these problems as anybody.

Mr. WISE. I appreciate that, and I have known you through some legislative controversy, brief as it was and may be, and I would not expect that from you either. But I am curious whether Mr. Hipes has any oversight or review function in either of these two projects.

Mr. ROBINSON. I will refer that to Mr. Johnson.

Mr. JOHNSON. Yes, sir; he is our project engineer on the Elk-Pinch project.

Mr. WISE. He did the review what you are talking about, referring to earlier?

Mr. JOHNSON. The review of plans and specs?

Mr. WISE. Yes, sir.

Mr. JOHNSON. At that time, we had several engineers doing that review, not just one person.

Mr. WISE. Mr. Chairman, I recognize the hour is late and we have sure pushed our wits to the maximum, and I appreciate their tolerance.

I just want to renew a plea. I think we have seen some of the problems when we first started this thing today, the point made throughout, accountability, I think some steps are being taken to resolve that. I think we have got a ways to go.

There seem to be two overall issues, one the broad issue, Mr. Longest, that deals with the policy level, the other what we are going to do about Elk Pinch. Malden has been in the backdrop today. Everyone knows, I hope, Malden is in technical default of its bond resolution and has a great deal of problems coming on.

Incidentally, the boycott has been over for 3 months now so it was testified earlier those revenues are coming in and some of the delinquent accounts have been paid up. That is no longer holding Malden back.

Elk Pinch, we hope, starts this week. I think a lot of that depends upon you gentlemen sitting at this table as to whether that happens. If it doesn't, then I fear that September, when we have our hearing in September, we may be rehashing a lot of this again.

I hope out of all this experience we will all learn to work together, because that has been one of the problems throughout these projects, that everyone has been at their own purpose, sometimes pointing fingers at one another, whatever, but I haven't seen that work together.

I do have to ask one more question as a result of both my investigations or my activity or the activity of this subcommittee, has there been any action by the Environmental Protection Agency Region 3 to hold back on funding any other projects in West Virginia? Has there been any change in the procedure?

Mr. EICHLER. None at all.

Mr. WISE. Mr. Robinson, have you noticed any problems that way?

Mr. ROBINSON. No.

Mr. WISE. Thank you very much. I wanted that for the record. Mr. Chairman, thank you very much.

Mr. LEVITAS. Thank you, Mr. Wise. I think the record is a full and complete one, and the concerns that you have expressed to me privately have been now made a matter of public record.

I would like to request of the U.S. Environmental Protection Agency that they inform the committee at the end of 30 days as to the current status of these matters so a letter to me would be appropriate just to let us know where things stand in 30 days' time.

I would also like to express my appreciation to the region 3 staff for their forthcoming cooperation and willingness to work with our investigative staff as they were developing their background materials for this hearing. That should be a model for other regional offices as they work, as we work cooperatively on our mutual concerns and perhaps had that policy been adopted by region 2 about 2 years ago, we might have not had such an exciting year last year, I suppose.

But in any event, I want to thank all of the witnesses for their participation. It has been a long day. We are talking about something that is quite important, and today's hearing, as I said at the outset, should serve as a milepost or benchmark for finding out where we are headed with this program, and will serve to provide us with additional guidelines for assessing improvement, which I expect to be forthcoming as a result.

Gentlemen, thank you very much for your assistance. The witnesses are excused.

[Whereupon, at 6:45 p.m., the subcommittee adjourned and proceeded to executive session.]

[The following was received for the record:]

U.S. Environmental Protection Agency,
Philadelphia, PA, June 22, 1984.

Hon. Elliott H. Levitas,
Chairman, Subcommittee on Investigations and Oversight, Committee on Public Works and Transportation, House of Representatives, Washington, DC.

Dear Mr. Chairman: I want to reiterate what I told you and the Subcommittee at the May 23, 1984 hearing on the Malden and Elk-Pinch projects, that I appreciate the opportunity to have shared the Environmental Protection Agency's perspective on the problems and prospects facing both projects. I hope that my testimony, as well as that of Henry Longest and Greene Jones, has been helpful to the Subcommittee as you develop a record on the participation of small communities in the wastewater facility construction grants program. As you requested, I am providing a report on what has developed at the projects since the hearing.

MALDEN PUBLIC SERVICE DISTRICT

Reported performance at the Malden treatment plant indicates significant improvements have taken place during the past year; while some operational problems still exist, these improvements have resulted in what we believe to be insignificant problems in meeting its NPDES permit limits.

A basic question which remains is the reliability of the laboratory data on permit compliance. To resolve this question, EPA will conduct a performance inspection at the Malden plant. The inspection will be performed by our staff on the laboratory procedures and techniques used by Malden's personnel. We are in communication with Mr. Charles Gates, Manager of the Malden PSD, to select a date in the near future. I will advise the Subcommittee of the results of the inspection when they are available.

The Malden PSD continues its desire to pursue legal action in connection with the apparent design deficiencies. We understand that the PSD intends to hire a new attorney for this purpose, and is interviewing a number of prospective attorneys at this time. EPA remains committed to provide assistance to the PSD, in the form of grant assistance for 75 percent of reasonable and necessary litigation costs for this purpose. We have told Mr. Gates, as I reported to the Subcommittee during the hearing, that our staff is willing to meet with its selected attorney to assist in preparing the necessary grant application.

ELK-PINCH PUBLIC SERVICE DISTRICT

We are very pleased to advise that construction was resumed on June 4, 1984 at the treatment plant, and that the Elk-Pinch PSD is negotiating with other construction contractors to resume work on the lift stations and collection sewers. It is also encouraging that the PSD has hired Operations Management International, Inc., to assist during the remainder of construction and to operate the plant when it is completed. As our March 8 letter to the PSD clearly stated, EPA strongly supports the PSD's efforts to improve its project management capabilities during this critical period. I believe that this contractor assistance provides the best opportunity for prompt completion of construction and professional system operation.

The Elk-Pinch PSD's budget continues to show a significant deficit of approximately $800,000. We are concerned that any financial plan by the PSD address both the immediate requirements for contruction as well as adequate revenue for satisfactory operation once construction is complete.

We are pleased with the initiative local authorities are taking by scheduling a meeting on June 28 with the Municipal Bond Insurance Association and other interested parties concerning its budget deficit and ways to reduce or eliminate it. I want to assure the Subcommittee that EPA will actively participate in this meeting and that we are carefully monitoring these funding developments. We will also continue to provide our best advice to the Elk-Pinch PSD on how best to proceed under the construction grants program.

To assist me in understanding the Elk-Pinch project, I visited the community on June 4 and toured the incomplete facilities. As I told the Subcommittee at the hearing, EPA will consider both the needs of the citizens in the Elk-Pinch community and the requirement to protect a substantial Federal investment in making all key decisions on the project.

I hope that this status report is helpful to you. I will keep the Subcommittee informed of all developments on both projects as they occur. Please let me know if additional information on either project is needed at this time.

Sincerely,

Thomas P. Eichler,
Regional Administrator.